RECORD, CASES NOS. 13891 AND 13892.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 272.

CHARLES E. MILLER AND DANIEL G. ROLLINS, EXECUTORS OF CHESTER A. ARTHUR, DECEASED, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

JAMES M. CONSTABLE ET AL., SURVIVORS OF ARNOLD, CONSTABLE & CO.

TERM NO., 273.

JAMES M. CONSTABLE ET AL., SURVIVORS OF ARNOLD, CONSTABLE & CO., PLAINTIFFS IN ERROR,

vs.

CHARLES E. MILLER AND DANIEL G. ROLLINS, EXECUTORS OF CHESTER A. ARTHUR, DECEASED, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between James M. Constable & al., survivors of Arnold, Constable & Co., plffs., and Charles E. Miller & Daniel G. Rollins, executors of Chester A. Arthur, defendants, a manifest error hath happened, to the great damage of the said Charles E. Miller & Daniel G. Rollins, executors of Chester A. Arthur, as by their complaint appear. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the part aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and eighty-nine, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 14th day of October, in the year of our Lord one thousand eight hundred and eighty-nine.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from five to one hundred and seventeen, inclusive, contain a true and complete transcript of the records and proceedings had in said court, in the case of Charles E. Miller and Daniel G. Rollins, executors of Chester A. Arthur, plaintiffs in error, against James M. Constable & al., survivors of Arnold, Constable & Co., defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 26 day of October, in the year of our Lord one thousand eight hundred and eighty-nine and of the independence of the United States the one hundred and fourteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsed:) E. & A. A., 879. No. 2683. U. S. Supreme Court. Charles E. Miller & al., ex. &c., plaintiffs in error, against James M. Constable & al, survivors, &c., defendants in error. Writ of errror. Ed-

ward Mitchell, U. S. atty., attorney for plaintiff in error. Due service of a copy of the within writ of errror is hereby admitted this 14 day of Oct., 1889. W. B. Coughtry, W., attorney for defendant in error. U. S. circuit court. Filed Oct. 14, 1889. John A. Shields, clerk.

3 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between James M. Constable et al., survivors, &c., plaintiffs, and Charles E. Miller et al., executors, &c., defendants, a manifest error hath happened, to the great damage of the said plaintiffs as is said and appears by their complaint, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of October term, 1889; that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 21st day of October, in the year of our Lord one thousand eight hundred and eighty-nine, and of the independence of the United States the one hundred and fourteenth.

[L. S.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

4 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from five to one hundred and seventeen inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of James M. Constable & et., survivors of Arnold Constable, & Co., plaintiffs in error, against Charles E. Miller and Daniel G. Rollins, executors of Chester A. Arthur, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York,

in the second circuit, this 26th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, and of the independence of the United States the one hundred and fourteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsed:) E. & A. A. 2683. Supreme Court of the United States. James M. Constable et al., plaintiffs in error, vs. Charles E. Miller et al., ex'rs., &c., defendants in error. Writ of error. W. B. Coughtry, 33 Pine st., N. Y. City, attorney for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this 22nd day of October, 1889. Edward Mitchell, U. S. atty., attorney for defendants in error. U. S. circuit court. Filed Oct. 22, 1889. John A. Shields, clerk.

5 Supreme court, city & county of New York.

AARON ARNOLD, RICHARD M. ARNOLD, JAMES M. Constable, Joseph P. Baker, and Leonard Jacobs, plaintiffs,
against
CHESTER A. ARTHUR, COLLECTOR OF THE PORT of New York, defendant.

Summons for money demand on contract. (Com not. ser.)

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the city hall in said city, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 112 Broadway, New York city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiffs in this action will take judgment against you for the sum of four thousand dollars, with interest from the eighth day of March, one thousand eight hundred and seventy-three, besides the costs and disbursements of this action.

W. B. COUGHTRY,
Plaintiff's Attorney.

Dated October 29th, 1873.

6 (Endorsed:) Supreme Court. Aaron Arnold et. als. vs. C. A. Arthur. Summons. W. B. Coughtry, pltffs'. atty., 112 Broadway, N. Y. Service of a copy hereof is hereby admitted. Dated Oct. 30, 1873. C. A. Arthur, collector. (D. O. D.)

AARON ARNOLD ET ALS., Plaintiffs,
vs.
CHESTER A. ARTHUR, collector of the port of New York, defendant.

The particulars of the plaintiff's claim in this action are as follows:

For excess of duties illegally exacted by the defendant from, and paid under protest by, the plaintiffs, upon merchandise imported by Arnold, Constable & Co., viz:

Port of entry.	Name of vessel.	Whence imported.	Description of merchandise.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of duty illegally exacted.	Protest filed.	Date of appeal.	Date of Secretary's answer thereto.
New York	Spain	Gt. Britain	Hosiery	1872. Aug. 10	Aug. 27	1872. Aug. 27	$381.50	1873. Ap'l 4	1873. Ap'l 20	
"	Wisconsin	"	"	1873. Mch. 4	'73. Mch. 20	'73. Mch. 20	16.70	June 24	July 8	Aug. 1
"	Idaho	"	"	Feb'y 8	Feb. 28	Feb. 28	70.40	July 22	" 13-28	" 23
"	do	"	S. crapes & veils	" "	" "	" "	72.20	" "	Aug. 13	" 22
"	Manhattan	"	Hosiery	" 22	Mch. 17	Mch. 17	102.50	" 29	" 13	" "
"	do	"	S'lk crapes & veils	" "	" "	" "	30.80	" "	" 15	" 22
"	Java	"	Hosiery	Ap'l 5	Ap'l 16	Ap'l 16	5.40	Aug. 14	Sep. 10	Sep. 24
"	Russia	"	Silk & cotton neckties	July 12	July 24	July 24	12.60	" "	" "	" 22
"	C. of Brussels	"	Silk crapes & veils	'72. Dec. 30	Jan'y 16	Jan'y 16	30.40	" 19	" 8	Oct. 3
"	do	"	S. & c'n neckties	" "	" "	" "	24.00	" "	" "	" "
"	Nevarda	"	Hosiery	'73. July 9	July 24	July 24	774.25	Sept. 4	" 26	" 16
"	Algeria	"	S'lk c'rp's & veils	Mch. 22	Ap'l 4	Ap'l 4	28.10	" 24	Oct. 13	" 24
"	City of Paris	"	do	'72. Oct. 30	Nov. 12	Nov. 12	16.10	Ap'l 18	May 12	

Yours, &c.,

W. B. COUGHTRY,
Plaintiffs' Attorney, 112 *Broadway, N. Y.*

To GEORGE BLISS, Esq.,
Defendant's Attorney, 41 *Chambers Street.*

8 (Indorsed:) 2683. Supreme court. A. Arnold et als., versus C. A. Arthur, collector, &c. Bill of particulars. Sir: Please take notice that the within is the bill of particulars of the plaintiffs' claim in the above action. Dated New York, Dec. 3, 1873. Yours, &c., W. B. Coughtry, plaintiffs' attorney To Geo. Bliss, esq., deft's att'y, 41 Chambers street. Due service of a copy hereof is hereby acknowledged, and service of copy of complaint waived. New York, Dec. 3, 1873. Geo. Bliss, defendant's attorney.

9 *The President of the United States of America, to the judges of the supreme court of the State of New York, greeting:*

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Aaron Arnold & al., plaintiffs, do therefore command you, that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 16th day of February, 1874, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Nathan Clifford, esquire, associate justice of the Supreme Court of the United States, the 7th day of February, in the year one thousand eight hundred and seventy-four.

[L. S.] KENNETH G. WHITE, *Clerk.*
GEORGE BLISS,
Defendant's Attorney.

(Endorsed:) U. S. circuit court. Chester A. Arthur ads. A. Arnold & al. Copy certiorari. George Bliss, defendant's attorney. Sir: 10 Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York, Feb. 7th, 1874. Yours, &c., George Bliss, defendant's attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, Feb. 7th, 1874. W. B. Coughtry, esq., plaintiffs' attorney. Rec'd 2/ 7/ '74.

11 Circuit court of the United States for the southern district of New York.

AARON ARNOLD, RICHARD ARNOLD, JAMES M. Constable, Joseph P. Baker, & Leonard Jacobs, plaintiffs,
against
CHESTER A. ARTHUR, COLLECTOR OF THE PORT of New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by Wm. B. Coughtry, their attorney, come here into court and suggest and give the court now here to understand and be informed that heretofore, to wit, on the thirtieth day of October, 1873, an action was commenced in the supreme court of the State of New York, in and for the city and county of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the thirtieth day of October, 1873.

That the defendant afterwards, by Geo. Bliss, esq., his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the tenth day of February, in the year of our Lord one thousand eight hundred and seventy-four, the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the thirtieth day of October, 1873, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of four thousand dollars, lawful money of the United States of America, for the money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly, to pay unto the said plaintiffs the said sum of money in this count mentioned when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being
12 in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of four thousand dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly, to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of four thousand dollars.

And therefore the plaintiffs bring suit, &c.

WM. B. COUGHTRY,
Plaintiffs' Attorney, 112 *Broadway*.

13 (Indorsed:) U. S. circuit court. Aaron Arnold et al., plaintiffs, vs. C. A. Arthur, collector of the port of New York, defendant. Declaration. Take notice, that on filing a declaration in this cause, with a copy of which you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, requiring the within-named defendant to plead to said declaration within twenty days after service of a copy of said declaration and a notice of said rules or judgment on his attorney. New York, Apl. 14, 1874. Wm. B. Coughtry, plaintiffs' attorney. To Geo. Bliss, esq., defendant's attorney, 41 Chambers st. Service of a copy of within is hereby admitted. George Bliss, defendant's attorney. New York, April 14th, 1874.

14 Circuit Court of the United States, for the Southern district of New York.

RICH'D ARNOLD AND JAMES M. CONSTABLE, Exr. of Aaron Arnold, dec., plaintiffs,
against
C. A. ARTHUR, COLLECTOR OF THE PORT OF New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by W. B. Coughtry, their attorneys, come here into court, and suggest and give the court now here to understand and be informed that heretofore, to wit, on the 10 day of Feb., 1874, an action was commenced in the supreme court of the State of New York, in and for the city and county of New York, according to the laws of the State of New York, and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 10 day of Feb'y, 1874.

That the defendant afterwards, by Geo. Bliss, Esq., his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the 23 day of May, in the year of our Lord one thousand eight hundred and seventy-four, the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court, did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the 10 day of Feb'y, 1874, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of

dollars, lawful money of the United States of America,

for the money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs, before that time paid, laid out and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day, and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to the
15 said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of five thousand dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs, has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of five thousand dollars.

And therefore the plaintiffs bring suit, &c.

W. B. COUGHTRY,
Plaintiffs' Attorney, 111 *B'way.*

16 (Indorsed:) U. S. circuit court. R. Arnold, Exr., *vs.* C. A. Arthur, collector of the port of New York. Declaration. W. B. Coughtry, Plff's Atty. Due service of a copy of within is hereby admitted. New York, June 10, 1876. Geo. Bliss.

17 Circuit court of the United States for the southern district of New York.

RICHARD ARNOLD & JAMES M. CONSTABLE, executors of Aaron Arnold, dec., et al., plaintiffs,
against
C. A. ARTHUR, COLLECTOR OF THE PORT OF New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by W. B. Coughtry, their attorneys, come here into court and suggest and give the court now here to understand and be informed

hat heretofore, to wit, on the 27 day of June, 1874, an action was commenced in the supreme court of the State of New York, in and for the city and county of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs, against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 27 day of June, 1874.

That the defendant afterwards, by Geo. Bliss, esq., his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the 24 day of Oct'r, in the year of our Lord one thousand eight hundred and seventy-four, the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true. Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of tre'pass on the case.

For that whereas the said defendant, on the 27 day of June, 1874, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of five thousand dollars, lawful money of the United States of America, for the money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs, before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said de-
18 fendant to the said plaintiffs and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of five thousand dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often

requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of five thousand dollars.

And therefore the plaintiffs bring suit, &c.

W. B. COUGHTRY,
Plaintiffs' Att'y, 111 *B'way.*

19 (Indorsed:) 3268. U. S. circuit court. R. Arnold, ex'r., et al., vs. C. A. Arthur, collector of the port of New York. Declaration. W. B. Coughtry, pltfs.' att'y. Due service of a copy of within is hereby admitted. New York, June 10, 1876. Geo. Bliss.

20 United States circuit court, southern district of New York.

CHESTER A. ARTHUR *ads.* AARON ARNOLD & AL. } Plea.

And the said defendant Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEO. BLISS,
Defendant's Attorney.

To W. B. COUGHTRY, ESQ.,
Plaintiffs' Attorney.

(Endorsed:) U. S. circuit court. Chester A. Arthur ads. A. Arnold & al. Plea. Geo. Bliss, attorney for defendant. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, April 16th, 1874. Yours, &c., Geo. Bliss, defendant's attorney. To W. B. Coughtry, esq., plaintiff's attorney. Rec'd, 4–16–74.

21 Supreme Court, city and county of New York.

AARON ARNOLD, RICHARD ARNOLD, JAMES M. Constable, Joseph P. Baker, and Leonard Jacobs, plaintiffs, *against* CHESTER A. ARTHUR, COLLECTOR OF THE port of New York, defendant. } Summons for a money demand on contract. (Com. not ser.)

To the above named defendants:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county

of New York, at the court-house in said county, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 112 Broadway, New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will take judgment against you for the sum of five thousand dollars, with interest from the thirteenth day of October, one thousand eight hundred and seventy-two, besides the costs and disbursements of this action.

Dated February 10, 1874.

WM. B. COUGHTRY,
Plaintiffs' Attorney.

22 (Endorsed:) Supreme Court. Aaron Arnold et als. vs. C. A. Arthur. Summons. W. B. Coughtry, pl'ffs' att'y. Service of a copy of within is hereby admitted this 10th day of Feb'y, 1874. W. H. N.

AARON ARNOLD ET AL. PLAINTIFFS,
vs.
CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, DEFENDANT.

The particulars of the plaintiffs' claim in this action are as follows: For excess of duties illegally exacted by the defendant from, and paid under protest by, the plaintiff upon merchandise imported by Arnold, Constable & Co., viz, Arnold, Constable and Co., viz:

Port of entry.	Name of vessel.	Whence imported.	Description of merchandise.	Date of Invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of duty illegally exacted.	Protest filed.	Date of appeal.	Date of Secretary's answer thereto.
				1873.	1873.	1873.		1873.	1873.	
New York	C. of Brussels	England	Gloves, hosiery, &c., made in frames	Aug. 21	Sept. 1	Sept. 1	81.25	Oct. 17	Nov. 4	Nov. 21
"	Algeria	"		Sept. 13	" 26	" 26	114.75	Nov. 3	" 7	" "
"	Baltic	"		Aug. 28	" 8	" 8	97.00	" "	" "	" "
"	C. of Brookyln	"		Feb. 11	Feb. 27	Feb. 27	661.50	" "	" "	" "
"	Russia	France		Aug. 16	Aug. 28	Aug. 28	197.10	" 6	" "	" "
"	Wisconsin	England		" 19	" 26	" 26	409.50	" "	" "	" "
"	Baltic	"		July 24	" 5	" 5	1,912.05	" 3	" "	" "

Yours, &c.,

WM. B. COUGHTRY.
Plaintiffs' Attorney, 112 *Broadway, N. Y.*

To GEORGE BLISS, Esq.,
Defendant's Attorney, 41 *Chambers Street.*

24 (Indorsed:) 2870. Supreme Court. A. Arnold et al. versus C. A. Arthur, collector, &c. Bill of particulars: Sir: Please take notice that the within is the bill of particulars of the plaintiffs' claim in the above action, dated New York, Mc'h 25, 1874. Yours, &c., W. B. Coughtry, plaintiffs' attorney. To George Bliss, esq., def't's att'y, 41 Chambers street. Due service of a copy hereof is acknowledged, and service of copy of complaint waived. New York, Mch. 25, 1874. George Bliss, defendant's attorney.

25 *The President of the United States of America to the judges of the supreme court of the State of New York, greeting:*

We, for certain reasons being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Aaron Arnold & al., plaintiffs, do therefore command you, that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 30th day of May, 1874, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon, what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 23rd day of May, in the year one thousand eight hundred and seventy-four.

[SEAL.] KENNETH G. WHITE, *Clerk.*

GEORGE BLISS,
Defendant's Attorney.

26 (Endorsed:) U. S. circuit court. Chester A. Arthur ads. A. Arnold & al. Copy certiorari. George Bliss, defendant's attorney. Sir: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, May 23rd, 1874. Yours, &c., George Bliss, defendant's attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, May 23rd, 1874. W. B. Coughtry, esq., plaintiffs' attorney. Recd. 5/25/74.

27 United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
RICHARD ARNOLD & AL., EXRS., &C., & AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared, against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To W. B. COUGHTRY, Esq.,
Plaintiffs' Attorney.

(Endorsed:) 2870. U. S. circuit court. Chester A. Arthur ads. Arnold. Plea. George Bliss, attorney for defendant. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, June 24, 1876. Yours, &c., George Bliss, defendant's attorney. To
28 W. B. Coughtry, esq., plaintiff's attorney. Alfred Douglas, jr., New York, Jun. 24, p. m.

29 Supreme court, city & county of New York.

AARON ARNOLD, RICHARD ARNOLD, JAMES M. Constable, Jospeh P. Baker, and Leonard Jacobs, plaintiff,
against
CHESTER A. ARTHUR, COLLECTOR of the port of New York, defendant.

Summons for a money demand on contract. (Com. not ser.)

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the county court-house in said city, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 111 Broadway, New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiffs in this action will take judgment against you for the sum of five thousand dollars, with interest from the 26th day of September, one thousand eight hundred and seventy-three, besides the costs and disbursements of this action.

Dated June 27th, 1874.

W. B. COUGHTRY,
Plaintiffs' Attorney.

30 (Endorsed:) 3268. Supreme court. A. Arnold et als. vs. C. A. Arthur. Summons. Service of a copy hereof is hereby admitted, this 27th day of June, 1874. Served on D. C. Phelps. C. C.

AARON ARNOLD ET ALS., PLAINTIFFS,
vs.
CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, DEFENDANT.

The particulars of the plaintiffs' claim in this action are as follows:
For excess of duties illegally exacted by the defendant from and paid under protest by, the plaintiffs, upon merchandise imported by Arnold, Constable & Co., viz:

Port of entry.	Name of vessel.	Whence imported.	Description of merchandise.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of duty illegally exacted.	Protest filed.	Date of appeal.	Date of Secretary's answer thereto.
				1873.	1873.	1873.		1873.	1873.	1874.
New York	Cuba	England	Gloves, hosery, &c., made on frames	Oct. 4	Oct. 17	Oct. 17	246.35	Dec. 10	Dec. 22	May 29
"	C. of Paris	"	"	Jan. 28	Feb'y 11	Feb'y 11	4.05	" "	" "	" "
"	Algeria	"	"	Oct. 18	Oct. 31	Oct 31	352.87	" 12	" "	" "
"	C. of Chester	"	"	Sept. 23	" 29	" 29	259.65	" "	" "	" "
"	C. of Brooklyn	"	"	July 17	July 30	July 30	1,313.30	" "	" "	" "
"	C. of London	"	"	" 31	Aug. 13	Aug. 13	47 25	" "	" "	" "
"	Cuba	"		Oct. 4	Oct. 17	Oct. 17	375.75	" "	" "	.....
									'74.	
"	C. of Richmond	"		Sept. 4	Sept. 16	Sept. 16	35.75	12	Jany. 7	.....
"	C. of Brussels	"		" 25	Oct. 6	Oct. 6	234.80	" 29	" "	June 5
								'74.		
"	Abyssinia	"	Thread laces—articles made on frames	" 9	Sept. 22	Sept. 22	63.90	Jany. 19	" 27	.....
"	Russia	"	"	" 20	Oct. 2	Oct. 2	140.38	" 23	" "	....
				'72.	'72.	'72.				
"	C. of London	"	"	Aug. 26	Sept. 10	Sept. 10	107.55	" 12	" "	.....
				'73.	'73.					
"	Java	"	"	July 19	July 31	July 31	455.41	Mch. 3	Mch. 7	.....

Yours, &c.

WM. B. COUGHTRY,
Plaintiffs' Attorney, 111 *Broadway, N. Y.*

To GEORGE BLISS, Esq.,
Defendant's Attorney, 41 *Chambers Street.*

32 (Indorsed:) 32,8. Supreme Court. Aaron Arnold et al. versusC. A. Arthur, collector, &c. Bill of particulars. Sir: Please take notice that the within is the bill of particulars of the plaintiffs' claim in the above action. Dated New York, Aug. 5th, 1874. Yours, &c., W. B. Coughtry, plaintiffs' attorney. To Geo. Bliss, esq., deft's attorney, 41 Chambers street. Due service of a copy hereof is hereby acknowledged and service of copy of complaint waived. New York, Aug. 6, 1874. Geo. Bliss, defendant's attorney.

33 *The President of the United States of America to the Judges of the Supreme Court of the State of New York, Greeting:*

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York in the Second Circuit shall be certified of a certain cause commenced before you, against Chester A. Arthur, defendant, by Aaron Arnold, & al., plaintiffs, do therefore command you that the record and proceedings in the said cause, you distinctly and openly send to the said circuit court, at the city of New York, on the 29th day of November, 1875, as fully and amply as the same are remaining before you, whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon, what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 24th day of November, in the year one thousand eight hundred and seventy-five.

[L. S.] KENNETH G. WHITE, *Clerk.*

GEORGE BLISS,
Defendant's Attorney.

34 (Endorsed:) 3,268. U. S. circuit court. Chester A. Arthur ads. Arnold. Copy certiorari. George Bliss, defendant's attorney. Sir: Take notice, that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Nov. 24, 1875. Yours, &c., George Bliss, defendant's attorney. W. B. Coughtry, esq., plaintiff's attorney. Rec'd 24, 11, 75.

35 United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
RICHARD ARNOLD & AL., EXRS. &C., & AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared, against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To W. B. COUGHTRY, Esq.,
Plaintiff's Attorney.

(Endorsed:) 3,268. U. S. circuit court. Chester A. Arthur, ads. Arnold. Plea. George Bliss, attorney for defendant. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, June 24, 1876. Yours, &c., George Bliss, defendant's attorney. To W. B. Coughtry, esq., plaintiff's attorney. Alfred Douglas, jr., New York. Jun. 24, p. m.

36 Bill of particulars. Imported by Messrs. at New York.

	Description of merchandise.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Amount of duties exacted in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
				1874	1874			1874	1874	1874
1	Thread lace	France	Konan	Feb. 21	Mch. 10	353		Apl. 4	Apl. 9	July 3
2	Veloms chappe	Germany	Rhine	Jan. 27	Feb. 24	560. 50		" 9	" "	
3	Embroidered ha'k'fs	France	"	" 21	" "	5. 80		" "	" "	Dec. 4
4	Thread lace	do	Java	July 19	July 31	308. 40		Mch. 3	Mch. 7	

37 (Indorsed:) 53. 3593. U. S. circuit court, southern district of New York. A. Arnold et als., against C. A. Arthur, collector, &c. Bill of particulars. New York, Oct. 7, 1874. To esq., esq., defendant's attorney. Sir: Please to take notice, that this action is brought to recover duties illegally exacted by the defendant, as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars. W. B. Coughtry, plaintiff's attorney, 167 Broadway. Due service of a copy hereof admitted this 8th day of October, 1874. Geo. Bliss, defendant's attorney.

38 Supreme court, city & county of New York.

AARON ARNOLD, RICHARD ARNOLD, JAMES M. Constable, Frederick A. Constable, Joseph P. Baker, & Leonard Jacobs, plaintiffs,
against
CHESTER A. ARTHUR, COLLECTOR OF THE PORT of New York, defendant.

Summons for money demand on contract. (Com. not Ser.)

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action which will be filed in the office of the clerk of the city & county of New York, at the county court-house in said county, and to serve a copy of your answer to the said complaint on the subscriber, at his office, No. 111 Broadway, New York, within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will take judgment against you for the sum of twenty-five hundred dollars, with interest from the sixth day of October, one thousand eight hundred and seventy-three, besides the costs and disbursements of this action.

Dated August 24, 1874.

W. B. COUGHTRY,
Plaintiffs' Attorney.

39 (Endorsed:) 3593. Supreme Court. Aaron Arnold et al. vs. C. A. Arthur. Summons. W. B. Coughtry, pl'ffs' att'y. Service of a copy hereof is hereby admitted this day, 24th of August, 1874. G. D.

40 *The President of the United States of America to the judges of the supreme court of the State of New York, greeting:*

We, for certain reasons, being desirous that our circuit court of the United States, for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Aaron Arnold & al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 14th day of December, 1874, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 7th day of December, in the year one thousand eight hundred and seventy-four.

[L. S.] KENNETH G. WHITE, *Clerk.*

GEORGE BLISS,
Defendant's Attorney.

41 (Indorsed:) 3,593. U. S. circuit court. Chester A. Arthur, ads. Arnold. Copy certiorari. George Bliss, defendant's attorney. Sir: Take notice, that the within is a copy of a certiorari this day issued

out of the circuit court of the United States for the southern district of New York. New York, Dec. 7, 1874. Yours, &c. George Bliss, defendant's attorney. W. B. Coughtry, esq., plaintiff's attorney. Recd. 12–7–74.

42 Circuit court of the United States for the southern district of New York.

RICH'D ARNOLD & JAMES M. CONSTABLE, ex'r of Aaron Arnold, plaintiffs,
against
C. A. ARTHUR, COLLECTOR OF THE PORT OF New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by W. B. Coughtry, their attorneys, come here into court and suggest and give the court now here to understand and be informed that heretofore, to wit, on the 24 day of Aug., 1874, an action was commenced in the supreme court of the State of New York, in and for the city and county of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 24 day of Aug., 1874.

That the defendant afterwards, by esq., his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the day of , in the year of our Lord one thousand eight hundred and , the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of tre'pass on the case.

For that whereas the said defendant, on the 24 day of Aug., 1874, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of twenty-five hundred dollars, lawful money of the United States of America, for the money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year

and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas also the defendant afterwards, to wit, on the same day and year and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said
43 defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of twenty-five hundred dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of twenty-five hundred dollars.

And therefore the plaintiffs bring suit, &c.

W. B. COUGHTRY,
Pl'ffs' Att'y, 111 *B'way.*

44 (Indorsed:) U. S. circuit court. R. Arnold vs. C. A. Arthur, collector of the port of New York. Declaration. W. B. Coughtry, pl'ffs' att'y. Due service of a copy of within is hereby admitted. New York, June 10, 1876. Geo. Bliss.

45 United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
RICHARD ARNOLD & AL., EXRS., &C., & AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To W. B. COUGHTRY, Esq.,
Plaintiffs' Attorney.

(Indorsed:) 3593. U. S. circuit court. Chester A. Arthur ads. Arnold. Plea. George Bliss, attorney for defendant. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit

court for the southern district of New York. New York, June 24, 1876. Yours, &c., George Bliss, defendant's attorney. To W. B. Coughtry, esq., plaintiffs' attorney. Alfred Douglas, jr. New York. Jun. 24, p. m.

46 Supreme court, city and county of New York.

AARON ARNOLD, RICHARD ARNOLD, JAMES M. Constable, Joseph P. Baker, and Leonard Jacobs, plaintiffs,
against
CHESTER A. ARTHUR, COLLECTOR OF THE PORT of New York, defendant.

Summons for a money demand on contract. (Com. not ser.)

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the county court-house in said city, and to serve a copy of your answer to the said complaint on the subscriber, at his office, No. 111 Broadway, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will take judgment against you for the sum of three thousand dollars, with interest from the twentieth day of May, one thousand eight hundred and seventy-four, besides the costs and disbursements of this action.

Dated Nov'r 24, 1874.

W. B. COUGHTRY,
Plaintiff's Attorney.

46½ (Endorsed:) 3970. N. Y. Supreme Court. A. Arnold & al., vs. C. A. Arthur. Summons. W. B. Coughtry, plffs. atty. Service of a copy hereof is this day hereby admitted. Dated Nov. 24, 1874. W. H. N.

AARON ARNOLD ET AL., PLAINTIFFS,
vs.
CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, DEFENDANT.

The particulars of the plaintiffs' claim in this action are as follows:

For excess of duties illegally exacted by the defendant from and paid under protest by the plaintiffs upon merchandise imported by Arnold, Constable & Co., viz:

Port of entry.	Name of vessel.	Whence imported.	Description of merchandise.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of duty illegally exacted.	Protest filed.	Date of appeal.	Date of Secretary's nswer thereto.
				1874.	1874.	1874.		1874.	1874.	1874.
New York	Oceanic	England	S. crapes & veils	Jan. 23	Feb. 12	Feb. 12	23.70	May 6	May 27	
	Celtic		Emb'd han'k'fs	Feb. 12	" 25	" 25	24.30	" "	" "	
	C. of Brussels		Hosiery	" 11	" "	" "	24.30	" 7	" "	Dec. 28
	C. of Richmond		"	Apl. 8	Apl. 20	Apl. 20	77.40	" 9	" "	
	"		Crapes	Apl. 8	" "	" "	22.50	" "	" "	
	Minnesota		"	Feb. 11	Mch. "	Mch. 20	54.30	" 13	" "	
	C. of Montreal		Emb. han'd	Jan. 9	Jan. 24	Jan. 24	28.25	" 20	" "	
	Republic		W. hosiery	" 9	Feb. 18	Feb. 18	120.15	" 28	June 16	
	C. of Antwerp		Emb'd hand'k	" 29	Feb. 16	Feb. 16	16.65	June 10	July 2	
	"		Hosiery	" "	" "	" "	362.50	" "	" "	
	C. of Richmond		"	Apl. 8	Apl. 20	Apr. 20	77.40	" 10	June 16	
	"		Cr. veils	" "	" "	" "	22.50	" "	July 2	
	Spain		"	Feb. 25	Mch. 11	Mch. 11	12.30	" "	" "	
	C. of Brooklyn		Gloves	" 5	Feb. 19	Feb. 19	25.50	" "	" "	
	Algeria		Cr. veils	Mch. 7	Mch. 19	Mch. 19	18.00	" 20	" "	
	"		Silk gloves	" "	" "	" "	45.00	" "	" "	
	Thuringia		" wg. app'l	Jan. 24	Feb. 5	Feb. 5	108.75	" "	" "	
	Scotia		" gloves	Apl. 18	Apl. 30	Apl. 30	73.25	" "	" "	

The particulars of the plaintiffs' claim in this action are as follows:

For excess of duties illegally exacted by the defendant from and paid under protest by the plaintiffs upon merchandise imported by, viz:

Port of entry	Name of vessel.	Whence imported.	Description of merchandise.	Date of service.	Date of entry at custom-house.	Date of payment of duties.	Amount of duty illegally exacted.	Protest filed	Date of appeal.	Date of secretary's answer thereto.
	C. of New York		W. hosiery	Jan. 22	Feb. 6	Feb. 6	237.60	Aug. 7	Aug. 20	
	Pommerania		Vel. chappe	" "	" 12	" 12	324.70	" "	" "	
	C. of Baltimore		Sk. hosiery	Feb. 26	Mch. 11	Mch. 11	64.06	" "	" "	
	"		W. "	" "	" "	" "	17.10	" "	" "	Dec. 23.
	C. of Brussels		W. "	Mch. 19	Apl. "	Apl. "	245.25	" "	" "	
	Calabria		S. H	Apl. 11	" 25	" 25	13.76	" "	" "	
	Cuba		Crape veils	" 25	May 7	May 7	30	" "	" "	
	Russia		S. hosiery	May 9	" 21	" 21	4.75	" "	" "	Dec. 23.
	Calabria		Crapes	" "	" 27	" 27	62.50	" "	" "	
	Scotia		"	" 23	June 3	June 3	4.80	" "	" "	
	C. of Brussels		Sk. shawls	Mch. 19	Apl. 2	Apl. 2	29.35	" 8	" "	
	Cuba		"	" 21	" 4	" 4	7.20	" "	" "	
	Abyssinia		"	" 28	" 13	" 13	24.75	" "	" "	
	Calabria		"	Apl. 11	" 25	" 25	45	" "	" "	
	Russia		"	" 4	" 17	" 17	109.80	" "	" "	
	"		"	May 9	May 21	May 21	34.20	" "	" "	
	Scotia		"	" 16	June 3	June 3	35.90	" "	" "	

49 *The President of the United States of America to the judges of the supreme court of the State of New York, greeting:*

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York in the second circuit shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Aaron Arnold & al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court at the city of New York, on the 8th day of March, 1875, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 2nd day of March, in the year one thousand eight hundred and seventy-five.

[L. S.] KENNETH G. WHITE, *Clerk.*

GEORGE BLISS,
Defendant's Attorney.

50 (Endorsed:) 3970. U. S. circuit court. Chester A. Arthur, ads. Arnold. Copy certiorari. George Bliss, defendant's attorney. Sir: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, M'ch 2, 1875. Yours, &c., George Bliss, defendant's attorney. W. B. Coughtry, esq., plaintiff's attorney. Rec'd 3/2/'75.

51 Circuit court of the United States for the southern district of New York.

RICH'D ARNOLD AND JAMES M. CONSTABLE, ex'r of Aaron Arnold, dec., plaintiffs,
against
C. A. ARTHUR, COLLECTOR OF THE PORT OF New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by W. B. Coughtry, their attorneys, come here into court, and suggest and give the court now here to understand and be informed, that heretofore, to-wit, on the 24th day of Nov., 1874, an action was commenced in the supreme court of the State of New York, in and for the city and county of New York, according to the laws of the State of New York, and the rule and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 24 day of Nov., 1874.

That the defendant afterwards, by Geo. Bliss, esq., his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the day of March, in the year of our Lord one

thousand eight hundred and , the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice in this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceeds and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the 24 day of Nov., 1874, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of three thousand dollars, lawful money of the United States of America, for the money before that time lent and advanced by the said plantiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs, before that time paid, laid out and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to
52 the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of three thousand dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs, has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of three thousand dollars.

And therefore the plaintiffs bring suit, &c.

W. B. COUGHTRY,
Plffs.' Att'y, 111 *Broadway.*

53 (Indorsed:) 3970. U. S. circuit court. R. Arnold, ex'r, et al. vs. C. A. Arthur, collector of of the port of New York. Declaration. W. B. Coughtry, plffs.' atty. Due service of a copy of within is hereby admitted. New York, June 10, 1876. Geo. Bliss.

54 United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
RICHARD ARNOLD & AL., EXRS., &C., & AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared, against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To W. B. COUGHTRY, Esq.,
Plaintiffs' Attorney.

(Endorsed:) 3970. U. S. circuit court. Chester A. Arthur ads. Arnold. Plea. George Bliss, attorney for defendant. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, June 24, 1876. Yours, &c., George Bliss, defendant's attorney. To W. B. Coughtry, esq., plaintiffs' attorney. Alfred Douglas, jr., New York. June 26, p. m.

55 Supreme court, city and county of New York.

AARON ARNOLD, RICHARD ARNOLD, JAMES M. CONSTABLE, FREDERICK A. CONSTABLE, JOSEPH B. BAKER, and LEONARD JACOBS, plaintiffs,
against
CHESTER A. ARTHUR, COLLECTOR OF THE port of New York, defendant. } Summons for a money demand on contract. (Com. not ser.)

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the city hall in said city, and to serve a copy of your answer to the said complaint, on the subscriber at his office, No. 111 Broadway, New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will take judgment against you for the sum of thirty-five hundred dollars, with interest from the eighth day of February, one thousand eight hundred and seventy-four, besides the costs and disbursements of this action.

Dated Feb. 11th, 1876.

W. B. COUGHTRY,
Plaintiffs' Attorney.

56 (Endorsed): Supreme court. A. Arnold et al. vs. C. A. Arthur. Summons. W. B. Coughtry, plffs'. atty. Service of a copy hereof is this day admitted. Dated Feb. 12, 1876. F. W. B.

AARON ARNOLD ET ALS., PLAINTIFFS.
vs.
CHESTER A. ARTHUR, COLECTOR OF THE PORT OF NEW YORK, DEFENDANTS.

The particulars of the plaintiffs' claim in this action are as follows:

For excess of duties illegally exacted by the defendant from, and paid under protest by, the plaintiffs, upon merchandise imported by Arnold, Constable & Co., viz:

Port of entry.	Name of vessel.	Whence imported.	Description of merchandise.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of duty illegally exacted.	Protest filed.	Date of appeal.	Date of Secretary's answer thereto.
				1875.	1875.	1875.		1875.	1875.	1875.
New York	Erin	England	Hosiery, &c., made on frames	Jan 20	Feb. 8	Feb. 8	$45.50	Mch. 18	Apl. 14	Nov. 17
"	Belgic	"	"	" 28	" 18	" 18	140.50	Apl. 7	May "	" "
"	France	"	"	" "	" 23	" 23	131.	" 6	" "	" "
"	Baltic	"	"	Feb. 25	Mch. 8	Mch. 8	465.	" 28	" "	" "
"	Gaelic	"	"	Feb. 11	Feb. 27	Feb. 27	65.50	July 10	July 27	Dec. 16
"	Baltic	"	"	Jan. 21	" 2	" 2	842.	" "	" "	" "
"	Celtic	"	"	Feb. 20	Mch. 2	Mch. 2	42.	" 21	" "	" "
"	C. of Montreal	"	"	Mch. 4	" 20	" 20	78.	" 20	" "	" "
										'76.
"	Italy	"	"	Jan. 27	Feb. 15	Feb. 15	164.50	Aug. 25	Sep. 4	Jan. 25
"	Gaelic	"	"	" "	" 11	" 11	65.50	" 24	" "	" "
										'75.
"	Brittanic	"	"	July 20	Aug. 2	Aug. 2	553.00	Sep. 23	Oct. 1	Dec. 29
										'76.
"	Germanic	"	"	Sept. 2	Sep. 13	Sep. 13	2,107.	Oct. 15	" 26	Jan. 25
"	Brittanic	"	"	Aug. 26	" 6	" 6	541.50		" "	" "
"	C. of Chester	"	"	Sep. 2	" 14	Sep. 14	31.50		" 26	" 25
"	C. of Brussels	"	"	Aug. 26	Sep. 7	" 7	78.50	Dec. 7	Dec. 18	.....
				'74.	'74.	'74.		'74.	'75.	'76.
"	Cuba	England	Emb'd linens	Oct. 10	Oct. 24	Oct. 24	2.90	" 18	Jan. 6	Jan. 19
								'74.		
"	Parthia	"	" "	Nov. 14	Nov. 28	Nov. 28	54.90	Dec. 18	" "	.....
"	Ville de Paris	France	" handkchfs.	Oct. 10	Oct. 24	Oct. 24	9.50	Jan. 2	Jan. 6	Jan. 19

[Continued.]

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Port of entry.	Name of vessel.	Whence imported.	Description of merchandise.	Date of invoice, 1874–'5.	Date of entry at custom-house, 1874–'5.	Date of payment of duties, 1874–'5.	Amount of duty illegally exacted.	Protest filed, 1874–'5.	Date of appeal, 1874–'5	Date of Secretary's answer thereto.
New York	Oder		Emb'd handkfs		'75. May 17	'75. May 17	$10.80	'75. July 6	'75. July 27	1876. Jan. 19
	Main	France	" "	'75. Apl. 20	'75. May 3	'75. May 3	20.75	'75. July 12	'75. July 27	" "
	Baltic	Liverpool	" linens		Feb. 2	Feb. 2	7.80	July 10	July 27	" "
	Algeria	England	" handk'fs	Oct. 17	'74. Oct. 30	'74. Oct. 30	30.15	'74. Dec. 8	'74. Dec. 19	" "
	C. of Montreal	England	" "	Mch. 4	'75. Mch. 20	'75. Mch. 20	29.40	'75. July 20	'75. July 27	
	Ayssinia	France	" "	Jan. 30	Feb. 13	Feb. 13	41.25	July 22	July 27	
	Italy	England	" "	" 27	Feb. 15	Feb. 15	22.60	Aug. 25	Sep. 4	
	Donan		Velours Chapps	June 26	July 17	July 17	382.40	Sep. 27	Oct. 22	
	Russia	France	Emb'd hdkfs	July 17	July 28	July 28	33.25	Sep. 27	Oct. 1	
	Bothnia	France	Emb. "	Aug. 28	Sep. 8	Sep. 8	30.75	Nov. 3	Nov. 20	
	Celtic	Liverpool	" "	Sep. 9	Sep. 20	Sep. 20	30	Nov. 8	Nov. 20	
	France	France	" "	" 25	Oct. 9	Oct. 9	20.60	'75. Nov. 11	'75. Nov. 20	
	City of Chester	Germany	Art made on frames	" 17	'74. Sep. 28	Sep. 28	101.50	'74. Dec. 3	'74. Dec. 9	
	Abyssinia	Gt. Br'tn	do	Oct. 24	Nov. 5	Nov. 5	718 50	" 8	" 9	

Yours, &c.,

W. B. COUGHTRY,
Plaintiffs' Attorney, 111 *Broadway, N. Y.*

To GEORGE BLISS, Esq.,
Defendant's Attorney, 41 *Chambers street.*

59 (Indorsed:) 4699. Supreme court. A. Arnold et al. versus C. A. Arthur. See order U. S. circuit court to amend bill of particulars Jan. 24, '85, collector, &c. Bill of particulars. Sir: Please take notice that the within is the bill of particulars of the plaintiffs' claim in the above action, dated New York, Mch. 24, 1876. Yours, &c., W. B. Coughtry, plaintiffs attorney, 111 B'w'ay. To Geo. Bliss, Esq., deft's att'y, 41 Chambers street. Due service of a copy hereof is hereby acknowledged, and service of a copy of complaint waived. New York, Mch. 27th, 1876. George Bliss, defendant's attorney. Certified refund on Treasury, instructions of Oct. 31. Statement issued. Amo. of express.

60 *The President of the United States of America to the judges of the supreme court of the State of New York, greeting:*

We, for certain reasons being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Aaron Arnold & al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 1st day of May, 1876, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 25th day of April, in the year one thousand eight hundred and seventy-six.

[L. S.] JOHN I. DAVENPORT, *Clerk.*
GEORGE BLISS,
Defendant's Attorney.

61 (Endorsed:) 4699. U. S. circuit court. Chester A. Arthur ads. Aaron Arnold & al. Copy certiorari. George Bliss, defendant's attorney. Sir: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Apl. 25, 1876. Yours, &c., George Bliss, defendant's attorney. W. B. Coughtry, esq., plaintiffs' attorney. Recd. Apl. 25, '76.

62 Circuit court of the United States for the southern district of New York.

AARON ARNOLD ET AL., PLAINTIFFS,
against
CHESTER A. ARTHUR, COLLECTOR OF THE port of New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by W. B. Coughtry, their attorneys, came here into court, and suggest and give the court now here to understand and be informed that heretofore, to wit, on the 12th day of Feb'y, 1876, an action was commenced in the supreme court of the State of New York, in and for the city and county of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 12th day of Feb'y, 1876.

That the defendant afterwards, by Geo. Bliss, esq., his attorney, duly appeared in said action and such proceedings were thereupon had, that afterwards and on the 25 day of April, in the year of our Lord one thousand eight hundred and seventy-six, the said action was in due form of law

removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the 12th day of February, 186 , at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of thirty-five hundred dollars, lawful money of the United States of America, for the money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs, before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being
63 in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of thirty-five hundred dollars of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of thirty-five hundred dollars.

And therefore the plaintiffs bring suit, &c.

W. B. COUGHTRY,
Plaintiffs Attorney, 111 *Broadway*.

64 (Indorsed :) 4699. U. S. circuit court. Aaron Arnold et al. vs. Chester A. Arthur, collector of the port of New York. Declaration. Wm. B. Coughtry, counsellor-at-law, 111 Broadway, plff's atty. Due service of a copy hereof is hereby admitted. Dated Feb'y 7, 1877. Stewart L. Woodford, U. S. att'y, def'ts att'y.

65 United States circuit court, southern district of New York.

CHESTER A. ARTHUR *ads.* AARON ARNOLD & AL. } Plea.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared, against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

STEWART L. WOODFORD,
Defendant's Attorney.

To W. B. COUGHTRY, Esq.,
Plaintiff's Attorney.

(Indorsed:) 4699. U. S. circuit court. Chester A. Arthur ads. Aaron Arnold & al. Plea. Stewart L. Woodford, attorney for defendant. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, Feb'y 27, 1877. Yours, &c., Stewart L. Woodford, defendant's attorney. To W. B. Coughtry, esq., plaintiff's attorney. Rec'd Feb'y 27.

66 United States circuit court, southern district of New York.

AARON ARNOLD & AL., PLFFS., *vs.* CHESTER A. ARTHUR, DEF'T. } 2683, 2870, 3268, 3593, 3970, 4699.

On reading and filing the subjoined consent, and on motion of Elihu Root, U. S. attorney, attorney for the defendant, it is

Ordered: That the above entitled actions, in said consent referred to, be and the same are hereby consolidated into one action to be known as Aaron Arnold & al. vs. Chester A. Arthur, No. 2683.

Dated New York, May 11, 1885.

A. B.

We do hereby consent that the above entitled actions be consolidated into one action to be known as Aaron Arnold & al. vs. Chester A. Arthur, 2683, and that an order to that effect be entered.

Dated New York, May 5, 1885.

W. B. COUGHTRY,
Plaintiff's Attorney.
ELIHU ROOT,
U. S. Attorney, Attorney for Defendant.

67 (Endorsed): 2683. United States circuit court. Southern district of New York. A. Arnold & al., plffs. vs. C. A. Arthur. Order of consolidation. Elihu Root, U. S. attorney, atty. for deft. To W. B. Coughtry, esq., plffs. atty. Recd. May 11th, /85.

68 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court rooms in the post-office building in the city of New York, on the 10th day of January, 1887.

JAMES M. CONSTABLE AND AL., SURVIVORS. &C., vs. CHESTER A. ARTHUR. } 2683.

On reading and filing the annexed affidavit of Macgrane Coxe, duly sworn to the 10th day of January, 1887, and the annexed exemplified copy of letters testamentary granted by the court of common pleas for the city and county of New York to Charles E. Miller and Daniel G. Rollins, on the 4th of December, 1886,

On motion of Stephen A. Walker, United States attorney, and attorney for said Chester A. Arthur,

It is ordered, That the said Charles E. Miller and Daniel G. Rollins, executors of the last will and testament of said Chester A. Arthur, deceased, be and they hereby are substituted as parties defendant in the above entitled action in the place of said Chester A. Arthur, deceased, and that said action stand revived and continued as against them.

(Signed) WM. J. WALLACE.

69 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on Monday, the 2d day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The honorable E. Henry Lacombe, circuit judge.

JAMES M. CONSTABLE ET AL., SURVIVORS, &C., vs. CHARLES E. MILLER ET AL., EXECUTORS, &C. } No. 2,683.

Now come the plaintiffs, by Stephen G. Clarke, esq., their counsel, and moves the trial of this cause.

Likewise come the defendants, by William W. Smith, esq., assistant United States attorney, their attorney.

Thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the plaintiffs, the argument of counsel, and the instructions of the court, the jury on the 6th inst. retire under charge of an officer duly qualified to attend them, and on their return into court say that they have agreed upon a verdict for the defendant upon the question submitted to them.

70 The court directs the jury to find a verdict for the plaintiffs on Exhibits Nos. 1, 3, 4, 5, 6, 13, 17, 20, 23, 25, 27, 28, 29, 35 (except in Nos. 3, 4, 5, 6, 20, and 29 the 10 per cent deduction under the act of 1872 is not to be allowed to plaintiffs), for the sum of $8,722.93.

Thereupon, the jury by direction of the court say that they find a verdict for the plaintiffs in the sum of eight thousand seven hundred and twenty-two dollars and ninety-three cents ($8,722.93), and so they say all.

On motion of Mr. Smith, deft's counsel the court grants a certificate of probable cause, and a stay of sixty days in which defendant may make a case with leave to turn the same into a bill of exceptions.

An extract from minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

71 Circuit court of the United States, for the southern district of New York.

JAMES M. CONSTABLE, JOSEPH P. BAKER & Leonard Jacobs, survivors of Arnold, Constable & Co.,
vs.
CHARLES E. MILLER ET ALS., EXECUTORS OF the estate of C. A. Arthur, dec'd. } No. 2,683.

The issues in the above action having been brought on for trial before Hon. E. Henry Lacombe, and a jury, at a trial term of said court, held at the city of New York, in said district, on the second day of March, 1888, and the issues having been tried, and a verdict for plaintiffs having been rendered on the sixth day of March, 1888, and the amount due under said verdict being found to be eighty-seven hundred and twenty-two dollars and ninety-three cents, and the costs having been taxed and adjusted at ninety-one dollars and thirty-five cents,

Now, on motion of W. B. Coughtry, attorney for plaintiffs,

It is ordered and adjudged that the plaintiffs recover of the defendant the sum of eighty-seven hundred and twenty-two dollars and ninety-three cents as damages and eight hundred and forty-six dollars and six cents as interest upon said verdict from the date of said verdict until the entry of this judgment, and ninety-one dollars and thirty-five cents costs
72 herein taxed as aforesaid, amounting altogether to the sum of ninety-six hundred and sixty dollars and thirty-four cents.

Judgment signed this 12th day of October, A. D. 1889.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) 2683. U. S. circuit court. Jas. M. Constable et als. vs. Chas. E. Miller et als. Judgment record. W. B. Coughtry, Plff's Atty., 33 Pine St., N. Y. U. S. circuit court. Filed Oct. 12, 1889. John A. Shields, clerk.

73 U. S. circuit court, southern district of New York.

JAMES M. CONSTABLE ET AL., SURVIVORS, ETC.,
against
CHARLES E. MILLER ET AL., EXECUTORS, ETC. } Bill of exceptions.

Be it remembered that afterwards and on the 2nd day of April, 1888, at a stated term of this court held in the city of New York, the issues in this cause came on for trial before the Hon. E. Henry Lacombe, a judge of this court, and a jury duly empanelled to try the issues therein.

The plaintiffs, to maintain the issues on their part, called as a witness John N. Wright, who, being duly sworn, testified as follows:

I look after the custom-house business for Arnold, Constable & Company. I have been in their employ since 1871. I classify the invoices and see that the liquidations are all correct. The invoices come to me and I send them down to the custom-house broker properly classified for entry; that is, with the duties classified on them. I classify them accord-

ing to the requirements made at the custom-house at the time of entry. I think I am able to identify the entries of the firm made in 1873 and 1874.

(Paper shown witness.) This is an entry of Arnold, Constable & Co. The oath is signed by Mr. Frederick A. Constable.

(Another paper shown witness.) This is the invoice upon which that entry is based.

74 (The entry and invoice were offered in evidence and marked Exhibits 1 and 1-i.)

Upon looking at those papers—the invoice and entry—I should judge that the rate of duty assessed upon the goods contained in cases 6469, 6470, and 6471 was fifty, thirty-five, less ten. The appraiser's return as to these goods is knit goods, woolen hosiery, over eighty, fifty, thirty-five, less ten. The goods in case 6469 are described in the invoice as one doz. 14-inch ladies' scarlet Arnerian vests 1150/2; also 1 doz. 26-inch ladies' scarlet Arnerian drawers 1150. Case 6470 is a part of the same, and the remainder is two dozen ladies' real merino vests 70/5, one dozen eight-inch misses' real merino vests 640/2. Case 6502 is 2 dozen 28-inch white merino vests; also in the same case high neck, long sleeves. The merinos are returned as knit wool hosiery, over eighty, fifty, thirty-five, less ten. Case 6503 contains 3 dozen 24-inch patent merino shirts. Then there is ten dozen four and a half, thirty-two G, patent merino socks There is also some cashmere hosiery and some cashmere three-quarter hose and some white merino vests, all returned as knit goods, wool hosiery, over eighty, fifty, thirty-five, less ten. Cases 6509 and 6510 contain colored Ringwood gloves, returned as knit goods, wool hosiery, over eighty, fifty, thirty-five, less ten.

(Paper shown witness.) This is an entry by the Algeria of September 27th, 1873.

(Another paper shown witness.) This is the accompanying invoice. Case 6619, on this invoice contains colored merino half hose, superior white merino hose, ladies' scarlet cashmere hose, ladies' colored cashmere hose, and ribbed hose. They were returned by the appr*ia*ser as knit goods, wool hosiery, over eighty, fifty, thirty-five, less ten.

75 (These papers were received in evidencee and marked Exhibits 3 and 3–i.)

(Paper shown witness.) This is an entry by the steamer Baltic, September 8th, 1873.

(Another paper shown witness.) This is the accompanying invoice. Case 6601 on this invoice is called ladies' merino vests, misses' merino pantalettes. They are returned as knit goods, wool hosiery, over eighty; fifty, thirty-five less ten; 6602 contains ladies' merino drawers and gent's merino drawers, returned in the same way.

(Said papers are received in evidence and marked Exhibits 4, 4-i.)

(Paper shown witness.) This is an entry by the City of Brooklyn, February 27th, 1873.

(Another paper shown witness.) This is the accompanying invoice. Case 5096 on this invoice contains gent's merino shirts, boy's fine gauze merino shirts, misses' superior gauze merino pant'lettes, ladies' superior gauze merino vests. Case 5096 contains ladies' superior F. D. gauze merino vests, ladies' B. T. superior gauze merino vests, ladies' B. T. superior gauze merino bodies, ladies' B. T. superior gauze merino vests. Case

5197 contains ladies' F. D. superior merino vests, misses' B. T. superior fine gauze merino shirts, men's B. T. superior fine gauze merino shirts. The goods in the next cases down to and including 5201 are described in the same way, and the goods in all these cases are returned as wool hosiery, knit goods, over eighty; fifty, thirty-five less ten.

(Said papers are received in evidence and marked Exhibits 5 and 5-i.)

(Paper shown witness.) This is an entry by the Baltic of August
76 5, 1873.

(Another paper shown witness.) This is the accompanying invoice. Case 6259 contains men's white merino cashmere shirts. The same in cases 6260 and 6261. Case 6262 are hose; cases 6298 to 6312, inclusive, are merino socks, cashmere. These were all returned as knit goods, wool hosiery, over eighty; fifty, thirty-five less ten.

(Said papers were received in evidence, and marked Exhibit 6 and 6–i.)

(Paper shown witness.) This is an entry by the Java, of July 30th, 1873.

(Another paper shown witness.) This is the accompanying invoice; 1117 contains mitaines alone; case 1118 contains the same. They are returned as knit goods, wool hosiery, over eighty; fifty, thirty-five less ten. (Said papers were received in evidence, and marked Exhibits 13 and 13–i.)

(Paper shown witness.) This is an entry by the Gaelic, of August 30th, 1873.

(Another paper shown witness.) This is the accompanying invoice. Case 6522 on this invoice contains merino vests; case 6523 contains the same; case 6524 contains the same; case 6525 contains the same, drawers, pants, and vests, merino; case 2526 contains merino goods; case 6235 contains cardigan jackets. These goods are all returned as knit goods, wool hosiery, over eighty; fifty, thirty-five less ten.

(Papers received in evidence, and marked Exhibit 17 and 17–i.)

(Paper shown witness.) This is an entry by the Egypt.

(Another paper shown witness.) This is the accompanying in-
77 voice. Case 7329 on this invoice contains merino bodies, shirts, and vests; case 7330 is merino vests; 7331 is merino vests and shirts; 7332 is merino vests, shirts, and pants; 7333 is merino pants and shirts; 7345 is merino pants, vests, and shirts. The rate of duty assessed on all these goods was fifty, thirty-five less ten.

(Said papers received in evidence and marked Exhibits 20 and 20–i.)

(Paper shown witness.) This is an entry by the City of Richmond, April 20, 1874.

(Another paper shown witness.) This is the accompanying invoice. Case 7169 on this invoice contains merino hosiery; case 7870 contains merino; case 7879 contains merino hosiery. These goods are all returned as knit goods, woolen hosiery, over eighty; fifty, thirty-five less ten.

(Said papers are received in evidence and marked Exhibits 23 and 23–i.)

(Paper shown witness.) This is an entry by the Republic, of February 18, 1874.)

(Another paper shown witness.) This is the accompanying invoice. Case 7347 on this invoice contains some merino hosiery. That was returned as knit goods, woolen hosiery, over eighty; fifty, thirty-five, less ten.

(Said papers were received in evidence and marked Exhibits 25, 25-i.)

(Paper shown witness.) This is an entry by the City of New York, February 6th, 1874.

(Another paper shown witness.) This is the accompanying invoice. Case 7205 on this invoice contains cashmere wool vests, also some merino vests; case 7206 contains merino goods, Shetland merino vests and
78 pants; case 7207 contains Shetland summer wool vests and pants; also some Shetland elastic merino vests and pants. These goods are all returned as knit goods, wool hosiery over eighty; fifty, thirty-five less ten.

(Said papers were received in evidence and marked Exhibits 27 and 27–i.)

(Paper shown witness.) This is an entry by the city of Brussels, April 1st, 1874.

(Another paper shown witness.) This is the accompanying invoice. Cases 7799, 7800, and 7801 contain merino hosiery; case 7810 contains cashmere hosiery. The rate assessed was fifty, thirty-five less ten.

(Said entry and invoice are received in evidence and marked Exhibit 28 and 28–i.)

(Paper shown witness.) This is an entry by the city of Baltimore, March 11th, 1874.

(Another paper shown witness.) This is the accompanying invoice. Case 7667 contains merino hosiery. The duty was paid according to the entry, at fifty, thirty-five less ten.

(The entry and invoice were received in evidence and marked Exhibits 29 and 29–i.)

(Paper shown witness.) This is an entry by the city of Brussels, February 25, 1875.

(Another paper shown witness). This is the accompanying invoice. Case 6457 contains some merino hosiery which was paid on at the rate of fifty, thirty-five less ten.

(Said entry and invoice were received in evidence and marked Exhibits 35 and 35–i.)

It was conceded that upon all the goods described by this invoice the collector had assessed and the plaintiffs had paid duties at the rate
79 of fifty cents a pound and thirty-five per cent ad valorem, less ten per cent.

Further to maintain the issues on their part, the plaintiffs then offered evidence tending to show that, against the rate of duty assessed and exacted by the collector, they had duly made within the time prescribed by law protests in writing on each entry, which said protests were each of them in one or the other of the two following forms:

"NEW YORK, *November 3rd*, 1873.

"Hon. C. A. ARTHUR, *Collector:*

"SIR: We hereby protest against the liquidation of woolen shirts drawers, and hosiery in cases ACC 6601 and 6602, on our importation ex steamer Baltic from Liverpool, entered for consumption, and duty paid September 8th, 1873, on which the appraiser assessed duty at the rate of fifty cents per pound and thirty-five per cent ad valorem, less ten per cent, whereas we claim that in accordance with section 22 of act of March 2nd,

1861, and section 13 of act of July 14th, 1862, which reads, 'caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all, similar articles made on frames, of whatever material composed,' etc., etc., they should only be liable to a duty of thirty-five per cent ad valorem, less ten per cent. We would respectfully ask that the entry be reliquidated and the amount legally exacted be refunded.

"We are yours, respectfully,

"ARNOLD, CONSTABLE & CO."

"NEW YORK, *March 3rd*, 1874.

"To the COLLECTOR OF CUSTOMS:

80 "SIR: We hereby protest against the ascertainment and levy of duties at the rate of fifty cents a pound and thirty-five less ten per cent ad valorem on the hosiery, in our entry, per Egypt, from Liverpool, July 31st, 1873, claiming that said goods were only liable for a duty at the rate of thirty per cent ad valorem and five per cent additional thereto, under the 22nd section of the act of March 2nd, 1861, and 13th section of the act of July 14th, 1862, which imposes said rate on caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, and not otherwise provided for, less ten per cent, under the second section of the act of June 6th, 1872. We paid the amount exacted from us in order to get possession of the goods, and claim to have the difference refunded, and hereby give notice that we desire and intend the duplicate protest filed herewith for transmission to the Secretary of the Treasury, to be an appeal to him from your decision on this and all similar future importations.

"ARNOLD, CONSTABLE & CO.

"By ALFRED DOUGLAS, JR., *Attorney*."

It was admitted that as to each of the aforesaid importations plaintiffs had duly appealed to the Secretary of the Treasury from the decision of the collector as to the rate and amount of duty, and that this suit had been duly commenced within the time required by statute.

Further, to maintain the issues on their part, plaintiffs then called as a witness John Doherty, who, being duly sworn, testified as follows:

I am a salesman in the employ of James McCreery & Co.; I have been with them five years, and have been a salesman about twenty years, 81 dealing in hosiery. I was in the employ of the plaintiffs as salesman in the hosiery department from 1866 to 1876. I occupied the position of what is known as second man; in that position it was my duty to know what goods came into that department. I saw copies of the invoices, and I saw the goods as they were received. I have a memorandum of all the numbers of the goods described in the invoices as we got them in. Referring to that memorandum, I can describe what goods were received.

Cross-examined by counsel for the defendant, witness testified: I made this memorandum about 1874 or 1875. I was making it at the time these invoices came in. I certainly didn't make a memorandum of the contents of each invoice as it came in. This memorandum was just the numbers that came and the cases and the prices; it was for my own information. I had copies of the invoices before me when I made the mem-

orandum; I know they were copies, because they were copied into a book which was called an invoice book, and that book I had access to. I can not tell that they were these invoices; I couldn't tell from the invoices. This memorandum is merely a copy of the different numbers and what they were and the sterling prices. By numbers I mean our own selling numbers. There is nothing in this memorandum that was not in the invoices themselves that I had before me at that time, whatever they were, except selling prices, that we put on them There was a number on the goods similar to the number on the invoice.

1150 and 1150/5 are scarlet cashmere vests. These are all wool. These goods were made for underwear. They were made on a frame. [Article handed witness.] This is a sample of the drawers or pants, and the vest is made to correspond with it. This is No. 1150, and
82 the 1150 upon that invoice was identical with this 1150. The manufacturers, I think, were Furleigh & Bertram. This pair of drawers was made on a frame.

(The sample was then offered in evidence.

Counsel for the defendant objected to its reception, on the ground that it was not an actual sample taken from the cases described in the invoice, and that its identification by the witness with the goods described in the invoice was purely an expression of opinion on his part. The court overruled the objection; to which ruling counsel for the defendant then and there duly excepted, and the exception was duly noted and allowed.

The sample was received in evidence and marked Exhibit 55.)

Q. Now in the invoice there are some merino vests and drawers. How did those differ from the Arnerian?

A. Merino means wool and cotton, as the term is used in this country. Merino goods are made on frames. The goods marked 80/2 were made by Cartwright and Warner; also 79/2.

Cross-examined by counsel for defendant, witness testified: I don't know how long these samples have been in stock. I have left Arnold, Constable & Co. for twelve years. I don't know what department of their store these goods came from or how long they have been there. In saying that these samples are similar to the goods described in the invoice I am simply giving my opinion, based upon my recollection, aided by this memorandum.

The selling numbers on this memorandum were made at that time and were never changed on the same garment. The numbers were fixed by the dealers, Arnold, Constable & Co. I don't know whether they have changed their selling numbers since 1873. It is not a usual thing
83 to do so. They never do that at all. If there were no numbers on these samples I don't think I could by means of the invoice and memorandum I have in my hand tell whether these samples corresponded with the articles described in the invoice; I might, some of them. It is very unusual to change those numbers in any house. They didn't change them while I was there.

(Samples 79/2 and 80/2 were offered in evidence.

Counsel for the defendant objected to the admission of the samples, on the ground that it was conceded that they were not actual samples of the merchandize imported, and that as to their having any similiarity to the goods imported witness admitted that he was simply giving his opinion, based upon a recollection of fifteen years.

The objection was overruled; to which ruling counsel for the defendant then and there duly excepted, and the exception was duly noted and allowed.)

Further examined by plaintiff's counsel, the witness testified [garments having been handed witness]: This is a sample of 305. It is a merino, made on frame.

(The sample was offered in evidence.

It was conceded that it is not a sample of the original importation.

Defendant's counsel objected to the sample being received in evidence, on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness is merely an expression of opinion on his part.

The court overruled the objection; to which ruling the defendant's counsel then and there excepted, and the exception was duly noted and allowed.

84 (Garment handed witness.) This is a sample of No. 205 merino drawers.

The sample was offered in evidence.

It was conceded that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness was merely an expression of opinion on his part.

The court overruled the objection, to which ruling defendants' counsel then and there duly excepted, and the exception was duly noted and allowed.

Cashmere hose are woolen goods. Mixed cashmere hose are woolen goods, except that the heel and toe were generally made of cotton. They were made on frames. All the hose imported in the year 1874 by Arnold & Constable that came under my obversation were made on frames.

(Garment handed witness.) This is a pair of merino drawers, numbered 7978. Wherever that number appears upon an invoice of Arnold, Constable & Co., it represents just the same article.

(The sample was offered in evidence.)

It was admitted that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness is merely an expression of opinion on his part.

85 The court overruled the objection, to which ruling defendants' counsel then and there duly excepted, and the exception was duly noted and allowed.

(Article handed witness.) These are samples of merino socks, and stockings made on frames, and are like the goods received by Arnold, Constable & Co. while I was in their employ.

(The samples were offered in evidence.)

It was conceded that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence on the ground that it was conceded not to be an actual sample of the goods imported and that its identification with those goods by the witness was merely an expression of opinion on his part.

The court overruled the objection, to which ruling defendants' counsel then and there duly excepted, and the exception was duly noted and allowed.

(Article handed witness.) These were ladies' merino hose, wool and cotton, made in the same way.

The samples were offered in evidence.

It was conceded that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence, on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness was merely an expression of opinion on his part.

The court overruled the objection, to which ruling defendants' counsel then and there duly except, and the exception was duly noted and allowed.

86 (Article shown to witness.) These are cashmere hose. The body of them are wool and the heel and toe are merino. They are made on frame.

The sample was offered in evidence.

It was conceded that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness was merely an expression of opinion on his part.

The court overruled the objection, to which ruling defendants' counsel then and there duly excepted, and the exception was duly noted and allowed.

(Shirt handed witness.) This is a cashmere shirt made of Arnerian wool.

Sample was offered in evidence.

It was conceded that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness was merely an expression of opinion on his part.

The court overruled the objection, to which ruling defendants' counsel then and there duly excepted, and the exception was duly noted and allowed.

87 The plaintiffs, to further maintain the issues on their part, called as a witness Charles M. Presby, who, being duly sworn, testified as follows:

I am in the employ of the plaintiffs, and have been with them twelve years. I am a buyer and manager of the hoisery and glove department. I came there four or five months after Mr. Doherty had left. I had been twenty years in the hoisery business before I went to Arnold, Constable & Co. I know all about the manufacturing of these goods. I have seen them manufactured. I have visited the manufactories. It is the rule with Arnold, Constable & Co. to keep the same selling numbers year after year always applied to the same article. I gave orders to my men to obtain the samples that have been produced here. It was done under my supervision. They represent numbers that are found on the invoices that are put in evidence.

(Articles shown witness.) This is a hand-knit all-wool Ringwood glove.)
(The pair of gloves was offered in evidence.)

It was conceded that it was not a sample of the original importation.

Defendants' counsel objected to the sample being received in evidence on the ground that it was conceded not to be an actual sample of the goods imported, and that its identification with those goods by the witness was merely an expression of opinion on his part.

The court overruled the objection, to which ruling defendants' counsel then and there duly excepted, and the exception was duly noted and allowed.

The samples of goods in evidence are generally made or knit on
88 hoisery frames. They are worn by men, women, and children. Some of them are made of cotton and wool, others are all wool. The term Merino in trade means a mixture of cotton and wool; the mixture is made in the carding; they card them both together. They take the portion of wool they wish to mix with the cotton, lay it aside, and it is carded right together. The cotton and wool are mixed in the same thread.

Cross-examined by defendants' counsel, the witness testified:

Merino is a fabric composed of wool and cotton. In regard to the samples that have been produced here there are many and various compositions as regards the proportions of wool and cotton. They would vary a great deal.

Further to maintain the issues on their part plaintiffs called as a witness T. B. Fogg, who, having been duly sworn, testified as follows:

My business is manufacturer of hosiery, but since 1869 I have been a salesman. For the last eight years I have been a salesman for C. A. Auffmordt & Co. My first experience in manufacturing hosiery was working on the stocking frame as a boy in Leicestershire and Nottinghamshire. I was then an apprentice to Cartwright & Warner. They made shirts, drawers, hose, half hose, and knit goods. Their goods are made on knitting machines. The same principle exist to-day, only instead of using the old hand frames now as we did then power frames have come into use, but the same principle exists to-day. The frame has been in use since it was invented by William Lee, of Nottinghamshire, one hundred years ago. The stocking frame produces a knitted fabric. The shirts and drawers made by Cartwright & Warner are made on this stocking frame. I have been engaged in the hosiery business in this country since 1869,
some portion of my time as salesman, and a portion of my time in
89 manufacturing and making similar goods to these.

Cartwright & Warner's goods were all made on frames. Prior to 1867 there were not to my knowledge any goods made on frames composed of any other material than cotton, wool, or worsted, silk, linen, or a mixture of those materials.

Further to maintain the issues on their part, plaintiffs called as a witness R. L. Patterson, who, being duly sworn, *as* testified as follows:

I am connected with the house of E. S. Jaffray & Co. in the hosiery business. I have been in that business from 35 to 40 years. I have seen hosiery made. I have dealt in the class of goods represented by these samples. They are made on frames. I know the term merino in trade. It means wool and cotton; wool and cotton are mixed together in the

staple in the same thread. The quantity of cotton and wool varies in merino according to the quality. You can reduce the quantity of wool as much as you like down to an infinite decimal.

Further to maintain the issues on their part, plaintiffs called as a witness Armand Hartman, who, being duly sworn, testified as follows:

I am in the hosiery business, and have been for twenty-five years. I am connected with the firm of Edward Scheitlin & Co. I have dealt in the class of goods represented by these samples all these years. They are knit on frames. I know the term merino in trade. It means a mixture of cotton and wool; it doesn't mean mixture in the same thread. It is mixed in the raw altogether before the thread is spun, and therefore there is cotton and wool in the same thread.

Further to maintain the issues on their part, plaintiffs called as
89½ a witness John B. Renwick, who, being duly sworn, testified as follows:

I am in the hosiery business, and have been for about twenty-five years. I am connected with the firm of Mills & Gibbs, Broadway & Grand street. I have been with them nearly eleven years, and before that was with the firm of Lee, Tweedy & Co. I am not very familiar with foreign underwear, but I am with domestic hosiery. If they are made on the other side as they are made here they are made on frames. I know the term merino. It is understood in trade always to mean cotton and wool.

Further to maintain the issues on their part, plaintiffs called as a witness William L. Boyce, who being duly sworn, testified as follows:

I am in the hosiery business, connected with the firm of Tefft, Weller & Co. I have been in the business for 23 years. I know the term merino in trade, and did in 1873. It meant a mixture of cotton and wool. They might be mixed in any manner. I don't know exactly how they are mixed myself, but merino meant in the trade part wool and part cotton in varying proportions; maybe ten per cent, and maybe fifty.

Further to maintain the issues on their part, plaintiffs called as a witness William B. Hoyt, who, being duly sworn, testified as follows:

In the years 1873 and 1874 I was employed at the appraiser's department in the custom-house, New York city. I was an examiner. (Exhibit 1–i shown witness.) That invoice went through my hands. I saw some of the goods contained in that invoice. The goods were ladies' merino vests. The samples in evidence here represent a similar class of goods. I have understood the term merino to mean wool and cotton. All
90 the information I could ever get as to these goods was that they were made on frames.

Cross-examined by defendant's counsel, witness testified: Merino is composed of wool and cotton in proportions varying according to the tastes of the manufacturer and the value of the goods that he makes. From feeling this sample, I should say it was wool and cotton. I can not tell by examining any particular merino what proportion of it is wool and what proportion cotton. I have tried that with chemicals and approximated it as near as I could do it, but failed to get the exact value.

Further to maintain the issues on their part, plaintiffs called as a witness A. L. Brown, who, having been duly sworn, testified as follows:

I am connected with the firm of Brown, Place & Co., 115 Franklin street, and Nottingham, England. I am somwhat acquainted with the

hosiery business. I have been in it all my life. I know a machine known as a frame, and have worked at it. [Witness examined the various samples in evidence.] These are all knitted on frames, and are shirts, drawers, pantelettes and stockings. They are all knit on different varieties of frames. The term merino is a trade term; it means a mixture of cotton and wool in certain proportions, carded together, and spun together, making an article known as merino in the trade. The cotton and wool is mixed together in the same thread, spun together, carded together. There may be more or less wool, from one per cent to ninety-five per cent; it is still merino. Plaintiff also introduced evidence tending to show that in 1867 and prior thereto there were in the trade and commerce in this country hosiery and other goods knit by hand.

Further to maintain the issues on their part, plaintiffs called as a witness Frederick W. Brooks, who, being duly sworn, testified as follows:

91 I have computed the difference between the amount of duties paid on the hosiery described in the exhibits in this case as assessed by the collector and the amount at thirty-five per cent, together with the interest on such amount from the date of their exaction to the present time, and I find that they amount in the aggregate to the sum of $8,722.93, the amounts on each entry separately being as follows:

Exhibit	1	$649.72	Exhibit	20	$918.82
"	3	161.03	"	23	146.31
"	4	181.89	"	25	229.02
"	5	946.92	"	27	454.25
"	6	3,108.93	"	28	365.94
"	13	595.70	"	29	122.19
"	17	796.18	"	35	46.03

These exhibits are those covered by the testimony of the witness Wright as to the various kinds of hosiery contained in the invoices, and the numbers are those given them by the court when they were received in evidence.

The plaintiffs then rested; and thereupon counsel for the defendant
92 moved that a verdict be directed in favor of the defendant's on the ground that the goods described in the invoices, having been composed wholly or in part of wool, were properly dutiable at the rate assessed upon them by the collector of fifty cents a pound and thirty-five per cent ad valorem, less ten per cent, under the provisions of section 2 of the act of March 2nd, 1867, and that the provisions in the acts of March 2nd, 1861, and July 14th, 1862, for caps, gloves, stockings, shirts, drawers, and other articles made on frames could not apply to these importations, because such provisions were, as to articles composed wholly or in part of wool, repealed by the second section of the tariff act of March 2nd, 1867.

The court denied the motion and refused to direct a verdict for defendants; to which ruling and refusal counsel for defendants then and there duly excepted, and the exception was duly noted and allowed. The defendants thereupon rested; and plaintiffs' counsel moves to direct a verdict in favor of the plaintiff".

The court granted the motion, and directed a verdict in favor of the plaintiffs for the sum of $8,722.93; to which ruling and direction defendants' counsel then and there duly excepted, and the exception was duly

noted and allowed; whereupon, under the direction of the court, the jury found a verdict for the plaintiffs in the sum of $8,722.93.

And inasmuch as the foregoing matters of law and fact and the several exceptions taken and made do not appear upon the records of the
93 trial; therefore, upon the prayer of the defendants, by their counsel, the said judge has signed the foregoing as and for a bill of exceptions in this case as of the second day of April, 1888.

E. HENRY LACOMBE,
Circuit Judge.

The foregoing is consented to as plaintiffs' bill of exceptions.

S. G. CLARKE,
Of Counsel for Plffs.
STEPHEN A. WALKER,
U. S. Atty., for Deft.

94 (Indorsed:) 2683. U. S. circuit court, southern district of New York. James M. Constable et al. versus Charles E. Miller et al., ex'rs, &c. Defendant's proposed bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant'. Due service of a copy of the within is hereby admitted. New York, Nov. 13th, 1888. W. B. Coughtry, attorney for plaintiff".

SIR: You will please take notice that a the within is a copy, of defendants' proposed bill of exceptions herein. Dated N. Y., Nov. 13th, 1888. Yours, etc., Stephen A. Walker, U. S. attorney, attorney for defendant. To W. B. Coughtry, esq., attorney for pl'ffs.

95 U. S. circuit court, southern district of New York.

JAMES M. CONSTABLE AND FREDERICK A. Constable, survivors of the firm of Arnold, Constable & Co.,
vs.
CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, deceased.
} Bill of exceptions in behalf of plaintiffs.

Afterward, and on the 2nd day of April, 1888, and from day to day up to the 6th day of April, 1888, at a stated term of this court held in the city of New York, the issues in this case came on for trial before the Hon. E. Henry Lacombe, a judge of this court, and a jury duly empaneled to try the issues therein.

The plaintiffs, to maintain the issues on their part, offered in evidence an invoice of mixed cashmere half hose made on frames, and the accompanying entry made September 6, 1873. Upon the entry of said goods the collector assessed duty at 60 cents per pound and 35% ad valorem less 10%, and the plaintiffs on the 29th day of December, 1873, filed their protest, the substance of which is as follows:

"NEW YORK, *Dec'r 29th*, 1873.

"CHESTER A. ARTHUR, Esq.,
"*Collector of the Port of N. Y.:*

"SIR: We hereby protest against the exaction of 50c. p. lb. and 35 less 10 per cent duty ad val. on our importation of wool, knit
96 hosiery, per steamer City of Brussels, from Liverpool, Oct. 6th, 1873, claiming that under the 13th section of the act of July 14,

1862, said goods should only pay a duty of 35 less ten per cent ad val. as 'socks & stockings * * * made on frames * * * not otherwise provided for.'" * * *

It appearing that this entry was liquidated according to the original classification and rate of duty on the 21st day of February, 1874, the attorney for the defendants moved that said protest be stricken out, on the ground that it is a protest filed before the liquidation of the duty, therefore premature and inadmissible, and that the jury be directed, as to entry Exhibit No. 15, to find a verdict for the defendant, upon the ground that there is no protest as to such entry filed in accordance with the statute.

This motion was granted by the court and a verdict directed accordingly for the defendant as to the amount claimed by the plaintiffs upon said entry; to which ruling and direction the plaintiff duly excepted, and the exception was duly allowed.

Plaintiffs also introduced in evidence several entries of goods made by them, some prior to June 22, 1874, and others after that date, of goods described as Novia imperial vests and drawers, returned by the appraiser as silk and cotton shirts and drawers, silk chief value, and as silk wearing apparel, and classified by the defendant as silk wearing apparel at 60% duty.

97 The plaintiffs also introduced protests, duly filed, in respect to which appeals were duly taken, the substance of which were as follows:

"We hereby protest against the exaction of sixty per cent ad val. duty on our importation of silk and cotton hosiery, per steamer Nevada, from Liverpool, July, 1873, A. C. C., 617 2/5, claiming that said goods come within the provisions of the act of March 2nd, 1861, section 22, as amended by section 13 of the act of July 14, 1862, and under such sections should be charged with thirty-five per cent ad val. duty only * * *

* * * We hereby protest against the exaction of sixty per cent duty ad val. on our importation of silk & cotton hosiery per steamer Manhattan, from Liverpool, Mch., 1873, A. C. C., 546 3/4, claiming that under the 8th section of the act of June 30, 1864, said goods should only pay a duty of fifty per cent ad val. as 'manufactures of silk not otherwise provided for.'" * * *

It further appeared in evidence that this class of goods was made of spun silk and cotton carded together; that all of them contained more or less cotton in substantial quantities, and that all of said goods were knit upon frames.

In further appeared in evidence that prior to 1867 there were no goods made on frames of any other material than cotton, wool or worsted, silk and linen, or a mixture of those materials.

98 Plaintiffs also introduced in evidence an importation of gloves known as Braganza gloves. The evidence in respect to these goods was that they were made upon frames and mostly of cotton with a slight admixture of silk, not exceeding 10%. Upon those goods 60% duty was paid. The return of the appraiser as to these goods was silk and cotton gloves made on frames as wearing apparel, 60%. 60% duty was accordingly paid under due protest and appeal, the protest claiming that said goods were liable only to a duty of 35% as gloves made

on frames. The entry was made September 1, 1873. As to these several entries of silk and cotton goods, the counsel for the defendant moved that a verdict be directed for the defendant, which motion the court granted, and directed a verdict for the defendant; to which ruling and direction counsel for the plaintiffs duly excepted, and the exception was duly allowed.

Counsel for the defendant then made a like motion as to certain entries of similar goods, all made prior to June 22, 1874, in respect to which the protest had claimed that they were dutiable at 50%, as well as the 35% according to the form heretofore set forth, which motion the court granted and directed a verdict for the defendant, to which ruling and direction the plaintiffs then and there duly excepted, and the exception was duly allowed.

Plaintiffs also introduced in evidence an entry with accompanying invoice under date of September 20, 1873. It appeared in evidence that the goods in controversy were "thread lace" upon which a duty of
99 60% instead of 30% had been exacted. The plaintiffs in due time filed a protest as follows:

"NEW YORK, *January* 19, 1874.

"CHESTER A. ARTHUR,
"*Collector of the Port of New York:*

"SIR: We hereby protest against the exaction of 60% duty ad valorem on our importation of thread lace shawls, per steamer Abyssinia from Liverpool, September, 1873, claiming that under the 6th Section of the act of July 14th, 1862, said goods should only pay a duty of 35% ad valorem as thread lace. We pay the amount exacted in order to get possession of the goods, and claim to have the difference refunded.

"ARNOLD, CONSTABLE & CO.,
"By ALFRED DOUGLASS, JR.,
"*Atty.*"

And also duly appealed.

As to the claim made by the plaintiffs upon this entry, counsel for the defendant moved the court to direct a verdict for the defendant upon the ground that the protest relied upon by the plaintiffs was wholly insufficient, which motion was granted by the court and a verdict for the defendant directed accordingly, to which ruling and direction counsel for the plaintiffs then and there duly excepted and the exception was duly allowed.

100 As to certatain other entries given in evidence of plaintiffs' importations, it appeared that they were various descriptions of merino or worsted hosiery made on frames upon which duty was assessed and paid at 50 cents per pound and 33% ad valorem less 10%, instead of at 35% ad valorem, as claimed by the plaintiffs, and in respect to these entries the plaintiffs introduced in evidence their protests, which were filed in due time, as follows:

"We hereby protest against the exaction of 50 c. p. lb. & 35 less 10 per cent. duty ad val. on our importation of hosiery per steamer City of Paris, from Liverpool, Feb'y 11, 1873, Cuba, from Liverpool, Oct'r 17, 1873, claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of thirty-five (less 10) per cent ad val. as 'articles made on frames of whatever material composed * * * not otherwise provided for.' * * *

* * * "We hereby protest against the exaction of 50 c. per lb. & 35 less 10 per cent duty ad val. on our importations of hosiery per steamers—

City of	Brooklyn,	from	Liverpool,	July 30, 1873.
"	London,	"	"	Aug. 13, "
"	Chester,	"	"	Sept. 29, "
Algeria,		"	"	Oct'r 31, "

claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of 35, less 10 per cent ad val. as 'articles made on frames, of whatever material composed * * * not otherwise provided for.'

101 * * * "We hereby protest against the liquidation of knit silk and woolen hosiery, contained in case A. C. C., 3866, and woolen hosiery contained in case A. C. C., 1857, on our entry Ex. Stmr. C. of London from Liverpool, entered for consumption and duty paid September 10th, 1872, which were returned by the appraiser as liable to duty respectively 60 per cent ad valorem on the silk and fifty cents per pound and thirty-five per cent ad valorem less ten per cent on the woolen goods; whereas, we claim they should only be liable to a duty of thirty-five per cent ad valorem on the silk goods and thirty-five per cent ad valorem less ten per cent on the woolen goods. * * *

* * * "We hereby protest against the exaction of 50c. p. lb. & 35 less 10 per cent duty ad val. on our importation of knit hosiery per steamer Cuba from Liverpool, Octr. 17th, 1873, claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of thirty-five less 10 per cent ad val. as 'articles made on frames * * * not otherwise provided for.'" * * *

Counsel for the defendant as to each of the entries covered by these protests, separately moved that the court direct a verdict for defendant on the ground of the insufficiency of the protest, which motion was granted by the court and a verdict for the defendant upon each of said entries

102 covered by the several protests aforesaid was directed, to which ruling and direction as to each separate entry counsel for the plaintiffs then and there duly excepted, and the exception was duly allowed.

As to certain other entries of the plaintiffs, given in evidence in respect to importations of worsted or merino goods, upon which duties were assessed at 50 cents per pound and 35% ad valorem, less 10%, and upon which the court directed a verdict for the plaintiffs, the plaintiffs claimed that they were entitled under the act of 1872 to have the rate of duty calculated at 35% less 10%. In respect to these entries the substance of these protests was against the payment of a duty of fifty cents a pound and thirty-five per cent ad valorem, less ten per cent, whereas we claim that in accordance with section 22, act of March 2nd, 1861, and section 13, act of July 14th, 1862, which read: "Caps, gloves, leggings, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, &c., &c., and the two together provide a duty of thirty-five per cent ad valorem." * * *

The court, upon the motion of counsel for the defendant, directed that under said protests plaintiffs were entitled only to recover the difference between 35% and the amount assessed and paid, and not the difference

between 35% less 10% under the act of 1872, to which ruling and
103 direction counsel for plaintiffs duly excepted, and the exception was duly allowed.

And inasmuch as the foregoing matters of law and fact and the several exceptions taken, made, and allowed do not appear upon the records of the trial, therefore, upon the prayer of the plaintiffs by their counsel, said judge has signed and sealed the foregoing, and as for the bill of exceptions in this case as of the 6th day of April, 1888.

E. HENRY LACOMBE.

We consent that within be signed as plaintiffs' bill of exceptions.

STEPHEN WALKER,
U. S. Att'y for Deft.
S. G. CLARKE,
Of Counsel.

(Endorsed:) No. 2683. U. S. circuit court, southern district of New York. James M. Constable et al., survivors, &c., vs. Charles E. Miller et al., executors, &c. Plaintiffs' bill of exceptions. W. B. Coughtry, attorney for plaintiffs, 33 Pine street, N. Y. city. U. S. circuit court. Filed Jul. 31, 1889. John A. Shields, clerk.

104 Supreme Court of the United States.

CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, plaintiffs in error,
vs.
JAMES M. CONSTABLE & AL., SURVIVORS OF Arnold, Constable & Co., defendants in error.
} Assignment of errors.

Afterwards, to wit, on the third Monday of October term, in the same term, before the justices of the said court, at the Capitol in Washington, come the said plaintiffs in error by Edward Mitchell, U. S. att'y, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendants.

And the said plaintiffs pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that (they) the said plaintiffs may be restored to all things which (they) (have) lost by occasion of said judgment, &c.

EDWARD MITCHELL,
U. S. Att'y, Att'y for Plffs. in Error.

105 (Indorsed:) N. S. 2683. United States Supreme Court. Charles E. Miller & al., executors, &c., plaintiffs in error, vs. James M. Constable & al., survivors, &c., defendants in error. Assignment of error. Ed-

ward Mitchell, U. S. att'y, attorney for pl'ffs in error. Due service of a copy of the within assignment of error is hereby admitted this 14th day of Oct., 1889. W. B. Coughtry, attorney for defendants in error. U. S. circuit court. Filed Oct. 14, 1889. John A. Shields, clerk.

106 Supreme Court of the United States.

JAMES M. CONSTABLE ET AL., SURVIVORS, &C., plaintiffs in error,
vs.
CHARLES E. MILLER ET AL., EXECUTORS, &C., defendants in error.
} Assignment of errors.

Afterwards, to wit, on the third Monday of October term, in the same term, before the justices of the said court, at the Capitol in Washington, come the said plaintiffs in error, by W. B. Coughtry, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants in error against the said plaintiffs in error; whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendants.

And the said plaintiffs pray that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occasion of said judgment, &c.

W. B. COUGHTRY,
Attorney for Plaintiffs in Error.

107 (Indorsed:) 2683. United States Supreme Court. James M. Constable et al., survivors, &c., plaintiffs in error, vs. Charles E. Miller et al., executors, &c., defendants in error. Assignment of error. W. B. Coughtry, 33 Pine street, N. Y. City, attorney for plaintiffs in error. Due service of a copy of the within assignment of error is hereby admitted this 22nd day of October, 1889. Edward Mitchell, U. S. att'y, attorney for defendants in error. U. S. circuit court. Filed Oct. 22, 1889. John A. Shields, clerk.

108 Supreme Court of the United States.

JAMES M. CONSTABLE ET AL., SURVIVORS OF Arnold, Constable & Co., plaintiffs in error,
vs.
CHARLES E. MILLER & DANIEL G. ROLLINS, executors of Chester A. Arthur, defendants in error.
} Joinder in error.

And afterwards, to wit, on the third Monday of October term, in said term, the said defendants in error, by Edward Mitchell, U. S. att'y, their attorney, comes here into court and says that there is no error to the prejudice of the said plaintiffs in error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in no respect increased.

EDWARD MITCHELL,
U. S. Atty., Attorney for Defendants in Error.

109 (Indorsed:) United States Supreme Court. James M. Constable et al., survivors of Arnold, Constable & Co., plaintiffs in error, *vs.* Charles E. Miller & al., executors, &c., defendants in error. Joinder in error. Edward Mitchell, attorney for defendants in error. Due service of a copy of the within joinder in error is hereby admitted this 22nd day of October, 1889. W. B. Coughtry, attorney for plaintiff in error. To Wm. B. Coughtry, esq., attorney for plaintiffs in error. U. S. circuit court. Filed Oct. 22, 1889. John A. Shields, clerk.

110 Supreme Court of the United States.

CHARLES E. MILLER ET AL., EXRS., ETC., plaintiffs in error, *v.* JAMES M. CONSTABLE ET AL., SURVIVORS, etc., defendants in error. } Joinder in error.

And afterwards, to wit, on the third Monday of October term, 1889, in said term, the said defendants in ~~error~~ by W. B. Coughtry, their attorney, comes here into court and say that there is no error either in the record or proceedings aforesaid, or in the giving of the jugdment aforesaid.

And they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

W. B. COUGHTRY,
Attorney for Defendants in Error.

111 (Indorsed:) 2683. United States Supreme Court. Charles E. Miller et al., exrs., etc., plaintiffs in error, *vs.* James M. Constable et al., survivors, etc., defendants in error. Joinder in error. W. B. Coughtry attorney for defendants in error. Due service of a copy of the within joinder in error is hereby admitted this 22d day of October, 1889. Edward Mitchell, U. S. atty., attorney for defndts. plaintiff in error. U. S. circuit court. Filed Oct. 22, 1889. John A. Shields, clerk.

112 Circuit court of the United States of America for the southern district of New York, in the second circuit.

JAMES M. CONSTABLE ET AL., SURVIVORS, &C., plaintiffs in error, *vs.* CHARLES E. MILLER AND DANIEL G. ROLLINS, executors, &c., defendants in error. } Bond for costs.

Know all men by these presents that we, John L. Shea, of the city of Brooklyn, county of Kings, and State of New York, and James Gray, of

the city, county, and State of New York, are held and firmly bound unto the above-named Charles E. Miller, Daniel G. Rollins, exrs., in the sum of two hundred and fifty dollars, to be paid to the said defendant in error, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eighteenth day of October, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas the above-named plaintiffs in error have prosecuted their writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit, by the judge of the circuit court of the United States, for the southern district of New York.

Now therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs, if they fail to make their said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. L. SHEA. [L. S.]
JAS. GRAY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 18 day of October, 1889, before me,

WM. MULLEDY,
Notary Public, Kings County. Cert. filed in N. Y. Co.

113 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John L. Shea and Jas. Gray, being duly sworn, each for himself deposes and says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

J. L. SHEA,
JAS. GRAY.

Sworn to this eighteenth day of October, A. D. 18 , before me,
WM. MULLEDY,
Notary Public, Kings Co., N. Y. Certificate filed N. Y. Co.

(Indorsed:) 2683. U. S. circuit court, southern district of New York. James M. Constable et al., survivors, &c., vs. Charles E. Miller, executor, &c. Bond for costs on writ of error. Approved as to form, amount, & sufficiency of sureties. Oct. 21, 1888. E. Henry Lacombe, U. S. circuit court. Filed Oct. 21, 1889. John A. Shields, c'k.

114 UNITED STATES OF AMERICA, ss:

To James M. Constable & al., survivors of Arnold, Constable & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and eighty-nine, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Charles E. Miller

and Daniel G. Rollins, executors of Chester A. Arthur, plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Dated Oct. 14th, 1889.

E. HENRY LACOMBE.

115 (Indorsed:) No. 2683. U. S. Supreme Court. Charles E. Miller & al., executors, &c., plaintiffs in error, against James M. Constable & al., survivors, &c., defendants in error. Citation. Edward Mitchell, U. S. att'y, attorney for plaintiffs in error. Due service of a copy of the within citation is hereby admitted this 14th day of October, 1889. W. B. Coughtry, attorney for defendants in error. U. S. circuit court. Filed Oct. 14, 1889. John A. Shields, clerk.

116 UNITED STATES OF AMERICA, ss:

To Charles E. Miller and Daniel G. Rollins, executors of Chester A Arthur, dec'd, greeting:

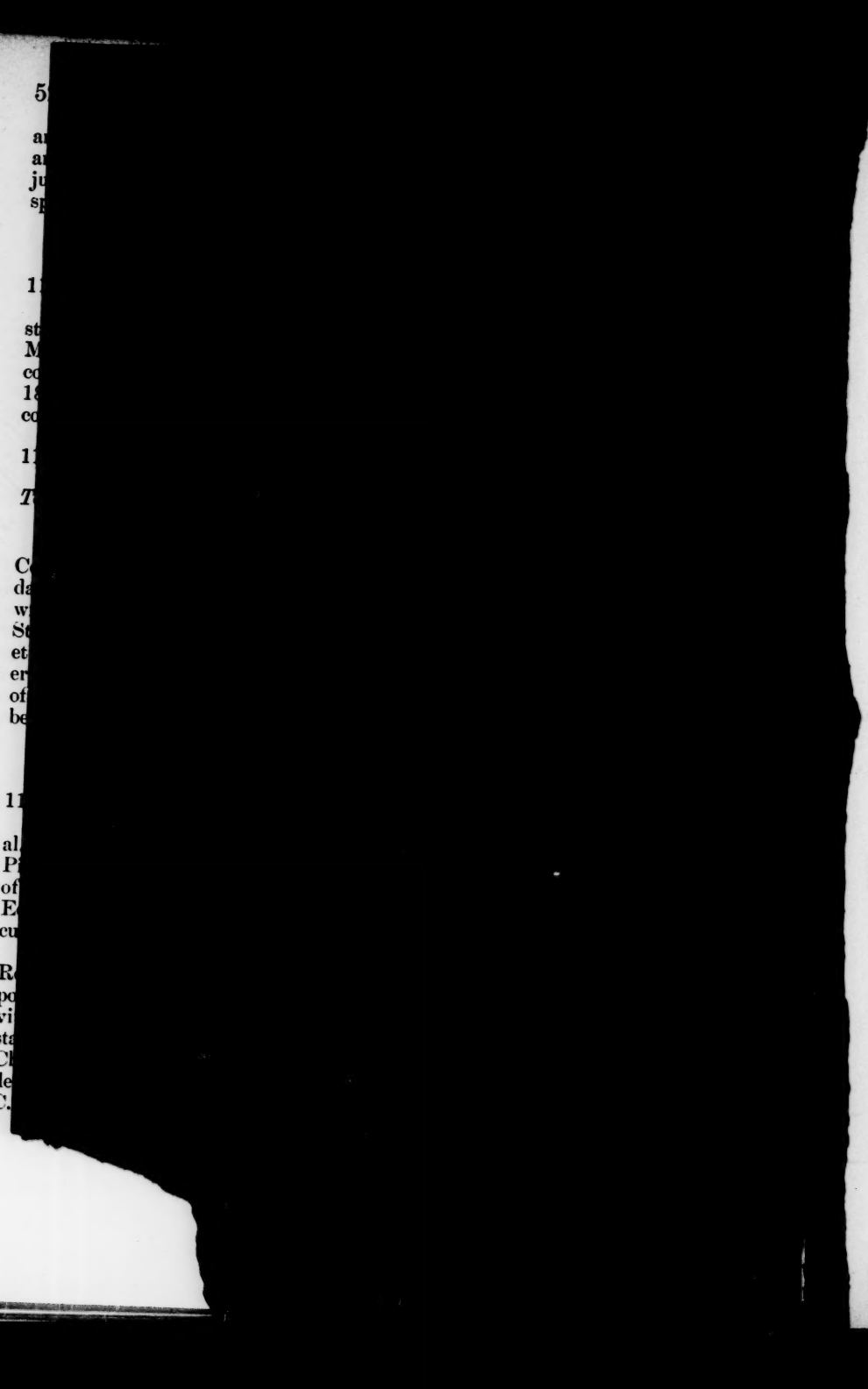
You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and eighty-nine, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein James M. Constable et al., survivors, &c., are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated N. Y., October 21st, 1889.

E. HENRY LACOMBE.

117 (Indorsed:) 2683. U. S. Supreme Court. James M Constable et al., survivors, &c., plaintiffs in error, against Charles E. Miller et al., executors, &c., defendants in error. Citation. W. B. Coughtry, 33 Pine st., N. Y. City, attorney for plaintiffs in error. Due service of a copy of the within citation is hereby admitted this 22nd day of October, 1889. Edward Mitchell, U. S. att'y, attorney for defendants in error. U. S. circuit court. Filed Oct. 22, 1889. John A. Shields, clerk.

(Indorsement on cover:) No. 272. Charles E. Miller and Daniel G. Rollins, executors of Chester A. Arthur, deceased, late collector of the port of New York, plaintiffs in error, vs. James M. Constable et al., survivors of Arnold, Constable & Co. 13891. No. 273. James M. Constable et al., survivors of Arnold, Constable & Co., plaintiffs in error, vs. Charles E. Miller and Daniel G. Rollins, executors of Chester A. Arthur, deceased, late collector of the port of New York. 13892. S. New York. C. C. U. S. Filed October 28, 1889.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

JAMES M. CONSTABLE ET AL.	
v.	No. 273.
CHARLES E. MILLER ET AL., Execrs.	

PLAINTIFFS' BRIEF.

Statement.

The plaintiffs' exceptions relate to numerous importations and entries, presenting several questions; but it will be found that—except as to certain of the goods containing silk—there was no claim made in behalf of the government, that the proper rate of duty had been assessed and collected. The rulings and directions in favor of the defendant collector were based upon supposed defects in the protests, either as to form or as to time of filing.

Like rulings of the same Circuit Court (in regard to the sufficiency and timeliness of the protest) have been reversed by this Court, in a number of decisions, since this cause was tried.

It is believed that all the protests referred to in plaintiff's bill of exceptions herein come within the

scope and effect, where not within the literal language, of these decisions of this Court.

For instance, as to the first entry and payment of duty, the plaintiffs failed to recover, simply because the protest, sufficient in form, was held by the Circuit Court to be premature, because filed before liquidation.

This Court holds the contrary. (130 U. S. 284.)

1. Correcting the misprint of September for October, the record states the facts and ruling as to this entry as follows:

"The plaintiffs, to maintain the issues on their part, offered in evidence an invoice of mixed cashmere half hose made on frames, and the accompanying entry made *October* 6, 1873. Upon the entry of said goods the collector assessed duty at 60 cents per pound and 35% ad valorem less 10%, and the plaintiffs *on the 29th day of December*, 1873, filed their protest, the substance of which (omitting address and subscription) is as follows:

"NEW YORK, Dec'r 29th, 1873.

We hereby protest against the exaction of 50c. p. lb. and 35 less 10 per cent. duty ad val. on our importation of wool, knit hosiery, per steamer City of Brussels, from Liverpool, Oct. 6th, 1873, claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of 35 less ten per cent. ad val. as socks & stockings . . . made on frames . . . not otherwise provided for." . . . (Rec. 44, 45.)

It appearing that this entry was liquidated according to the original classification and rate of duty *on the 21st day of February*, 1874, the attorney for the defendants moved that said protest be stricken out, *on the ground that it is a protest filed before the liquidation of the duty, therefore premature and inadmissible*, and that the jury be directed, as to entry Exhibit No. 15, to find a verdict for defendant, upon the ground that there is no

protest as to such entry filed in accordance with the statute.

This motion was granted by the court and a verdict directed accordingly for the defendant as to the amount claimed by the plaintiffs upon said entry; to which ruling and direction the plaintiff duly excepted, and the exception was duly allowed (Rec. 44–5).

II. Plaintiffs also introduced in evidence several entries of goods made by them, some prior to June 22, 1874, and others after that date, of goods described as Novia Imperial vests and drawers, returned by the appraiser as silk and cotton shirts and drawers, silk chief value, and as silk wearing apparel, and classified by the defendant as silk wearing apparel at 60% duty.

The plaintiffs also introduced protests, duly filed, in respect to which appeals were duly taken, the substance of which were as follows:

"We hereby protest against the exaction of sixty per cent. ad val. duty on our importation of silk and cotton hosiery, per steamer "Nevada," from Liverpool, July, 1873, A. C. C., 617 2/5, claiming that said goods come within the provisions of the act of March 2d, 1861, section 22, as amended by Section 13 of the act of July 14, 1862, and under such sections should be charged with thirty-five per cent. ad val. duty only. . . .

. . . We hereby protest against the exaction of sixty per cent. duty ad val. on our importation of silk and cotton hosiery, per steamer 'Manhattan,' from Liverpool, March, 1873, A. C. C., 546$\frac{3}{4}$, claiming that under the eighth section of the act of June 30, 1864, said goods should only pay a duty of fifty per cent ad val. as 'manufactures of silk not otherwise provided for' . . . (Rec. 45.)

It further appeared in evidence that this class of goods was made of spun silk and cotton carded together; that all of them contained more or less cotton in substantial quantities, and that all of said goods were knit upon frames.

It further appeared in evidence that prior to 1867 there were no goods made on frames of any other material than cotton, wool or worsted, silk and linen, or a mixture of those materials.

Plaintiffs also introduced in evidence an importation of gloves known as Braganza gloves. The evidence in respect to these goods was that they were made upon frames and mostly of cotton with a slight admixture of silk, not exceeding 10%. Upon those goods 60% duty was paid. The return of the appraiser as to these goods was silk and cotton gloves made on frames as wearing apparel, 60%. Sixty per cent duty was accordingly paid under due protest and appeal, the protest claiming that said goods were liable only to a duty of 35% as gloves made on frames. The entry was made September 1, 1873. As to these several entries of silk and cotton goods, the counsel for the defendant moved that a verdict be directed for the defendant, which motion the court granted, and directed a verdict for the defendant; to which ruling and direction counsel for the plaintiffs duly excepted, and the exception was duly allowed.

Counsel for the defendant then made a like motion as to certain entries of similar goods, all made *prior* to June 22, 1874, in respect to which the protest had claimed that they were dutiable at 50%, as well as the 35% according to the form heretofore set forth, which motion the court granted and directed a verdict for the defendant, to which ruling and direction the plaintiffs then and there duly excepted, and the exception was duly allowed. (Rec., 45–6.)

III. Plaintiffs also introduced in evidence an entry with accompanying invoice, under date of September 20, 1873. It appeared in evidence that the goods in controversy were "thread lace" upon which a duty of 60% instead of 30% had been exacted. The plaintiffs in due time filed a protest which (omitting its address, date and signature) is as follows:

We hereby protest against the exaction of 60% duty ad valorem on our importation of thread lace shawls, per steamer Abyssinia from Liverpool, September, 1873, claiming that under the 6th Section of the act of July 14th, 1862, said goods should only pay a duty of 35% ad valorem as thread lace. We pay the amount exacted in order to get possession of the goods, and claim to have the difference refunded. (Rec. 46 mid.)

And also duly appealed. *(Ib.)*

As to the claim made by the plaintiffs upon this entry, counsel for the defendant moved the court to direct a verdict for the defendant upon the ground that the protest relied upon by the plaintiffs was wholly insufficient, which motion was granted by the court and a verdict for the defendant directed accordingly, to which ruling and direction counsel for the plaintiffs then and there duly excepted and the exception was duly allowed. *(Ib.)*

IV. As to certain other entries given in evidence of plaintiffs' importations, it appeared that they were various descriptions of merino or worsted hosiery made on frames upon which duty was assessed and paid at 50 cents per pound, and 35% ad valorem less 10%, instead of at 35% ad valorem, as claimed by the plaintiffs, and in respect to these entries the plaintiffs introduced in evidence their protests, which were filed in due time, as follows:

"We hereby protest against the exaction of 50 c. p. lb. & 35 less 10 per cent. duty ad val. on our importation of hosiery per steamer City of Paris, from Liverpool Feb'y 11, 1873, Cuba, from Liverpool, Oct'r 17, 1873, claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of thirty-five (less 10) per cent. ad val. as 'articles made on frames of whatever material composed . . . not otherwise provided for'. . . .

. . . We hereby protest against the exaction of 50c per lb. & 35 less 10 per cent duty *ad val.* on our importations of hosiery per steamers.

City of Brooklyn, from Liverpool, July 30, 1873.
" London, " " Aug. 13, "
" Chester, " " Sept. 29, "
Algeria, " " Oct'r 31, "

claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of 35, less 10 per cent *ad val.* as 'articles made on frames, of whatever material composed . . . not otherwise provided for.'

. . . "We hereby protest against the liquidation of knit silk and woolen hosiery, contained in case A. C. C., 3866, and woolen hosiery contained in case A. C. C., 1857 on our entry Ex. Stmr. C. of London from Liverpool, entered for consumption and duty paid September 10th, 1872, which were returned by the appraiser as liable to duty respectively 60 per cent *ad valorem* on the silk and fifty cents per pound and thirty-five per cent *ad valorem* less ten per cent. on the woolen goods ; whereas, we claim they should only be liable to a duty of thirty-five per cent. *ad valorem* on the silk goods and thirty-five per cent. *ad valorem* less ten per cent. on the woolen goods. . . .

. . . "We hereby protest against the exaction of 50c. p. lb. & 35 less 10 per cent. duty *ad val.* on our importation of knit hosiery per steamer 'Cuba' from Liverpool, Octr. 17th, 1875, claiming that under the 13th section of the act of July 14, 1862, said goods should only pay a duty of thirty-five less 10 per cent. *ad val.*, as 'articles made on frames . . . not otherwise provided for.'" . . .

Counsel for the defendant as to each of the entries covered by these protests, separately moved that the Court direct a verdict for defendant on the ground of the insufficiency of the protest, which motion was granted by the Court, and a verdict for the defendant upon each of said entries covered by the several protests aforesaid was directed, to which ruling and direction as to each separate entry counsel for the plaintiffs then and there duly excepted, and the exception was duly allowed. (Rec. 46-7.)

V. As to certain other entries of the plaintiffs, given in evidence in respect to importations of worsted or merino goods, upon which duties were assessed at 50 cents per pound, and 35% ad valorem, less 10%, and upon which the Court directed a verdict for the plaintiffs, the plaintiffs claimed that they were entitled under the act of 1872 to have the rate of duly calculated at 35% less 10%. In respect to these entries the substance of these protests was against the payment of a duty of fifty cents a pound and thirty-five per cent *ad valorum*, less ten per cent, whereas we claim that in accordance with section 22, act of March 2nd, 1861, and section 13, act of July 14th, 1862, which read:

"Caps, gloves, leggings, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, &c., &c., and the two together provide a duty of thirty-five per cent *ad valorem*." . .

The court, upon the motion of counsel for the defendant, directed that under said protests plaintiffs were entitled only to recover the difference between 35% and the amount assessed and paid, and not the difference between 35% less 10% under the act of 1872, to which ruling and direction counsel for plaintiffs duly excepted, and the exception was duly allowed. (Rec. 47–8.)

Assignment of Errors.

The plaintiffs in error assign for error:—

I. The granting of defendant's motion to strike out the protest and to direct a verdict in his favor as to the entry first-mentioned in the bill of exceptions, upon the ground that the protest was ineffective because filed before liquidation of the duty; and the direction for such verdict accordingly. (Rec. 44–5.)

II. The direction of a verdict for defendant as to the silk and cotton hosiery per steamer Nevada, July, 1873, A. C. C. 617⅔. (Rec. 45 mid. and 46 top.)

III. The direction of a verdict for the defendant as to the silk and cotton hosiery per steamer Manhattan, March, 1873, A. C. C. 546¾. (Rec. 45, fol. 97, and 46 top.)

IV. The direction of a verdict for the defendant as to the Braganza gloves, made on frames, dutied as 'wearing apparel.' *(Ib.)*

V. The direction of a verdict for defendant as to the silk and cotton goods imported prior to June 22, 1874, dutied at 60% instead of 50%, or 35%, as they should have been. (Rec. 46 top.)

VI. The direction of a verdict for defendant as to the "thread-lace" goods, improperly dutied at 60%, instead of at 30%; and the ruling that the protest as to these goods was insufficient to enable the plaintiffs to recover the excessive duty exacted. (Rec. 46, fol. 99.)

VII. The direction of a verdict for the defendant as to the merino or worsted hosiery, made on frames, imported per steamers City of Paris, Feb. 11, 1873, and Cuba, Oct. 17, 1873; and the ruling that the protest relating thereto was insufficient to authorize a recovery. (Rec. 46, bot. and 47, fols. 101-2.)

VIII. The direction of a verdict for defendant as to the importations of hosiery per steamers City of Brooklyn, July 30, 1873; City of London, Aug. 13, 1873; City of Chester, Sept. 29, 1873, and the Algeria, Oct. 31, 1873; and the ruling that the protest relating thereto was insufficient to enable the plaintiffs to recover. (Rec. 47, top, and fols. 101-2.)

IX. The direction of a verdict for the defendant as to the kint silk-and-woolen hosiery in case A. C. C. 3866, and woolen hosiery Case A. C. C., 1857 per steamer City of London, entered Sept. 10, 1872; and the ruling that the protest relating thereto was insufficient to authorize or support a recovery by the plaintiffs thereon. (Rec. 47; fols. 101-2.)

X. The ruling that the protest as to knit goods (hosiery) per the steamer Cuba, Oct. 17, 1873, was

insufficient to enable the plaintiffs to recover as to the exactions therein complained of;—and the direction of a verdict for the defendant as to this importation. *(Ibid.)*

XI. The ruling and instruction that the plaintiffs were, by the form of their protests, precluded from recovering the ten per cent reduction under the act of 1872, as to certain importations of worsted or merino goods; and were confined thereby to a recovery only of the difference between the amounts exacted and the 35% mentioned in said protests; and were not entitled to recover the difference between the sums exacted and 35% less 10%. (Rec. 47, fol. 102 and 48 top.)

BRIEF.

I.

Protest before liquidation.

The first assignment of error relates to an importation of woolen socks, made on knitting-frames. There was no question but that the rate claimed by the plaintiffs, instead of that exacted by the collector, was correct; bnt the motion to strike out our protest (solely because it was filed Dec., 29, 1873, while the liquidation of duty was not made until Feb. 21, 1874) was granted; and a verdict was thereupon directed against us, on the sole ground "that there is no protest, as to such entry, *filed in accordance with the statute*". (Rec. 45 top.

That this is an error for which the judgment in this case must be reversed is settled by

Davies v. Miller, 130 U. S. 284.
Bedford v. Scribner, 144 Id. 505.

II.

Shirts and Drawers Made on Frames, Silk, Chief Value.

The second error assigned refers to importations of shirts and drawers, made upon frames, composed of cotton and silk, the latter material predominating in value; imported some before and some after June 22, 1874—the date of the revision in which the phraseology of the earlier laws was somewhat (and as to goods of which silk was chief value very materially) changed as to such articles as plaintiffs' imported.

Vietor v. Arthur, 104 U. S. 498.
Same v. Same, 22 Blatc. 39.
Arthur v. Vietor, 127 U. S. 577–8.

Through this last decision reversed in 22 Blatc. 39 (and 19 F. R. 250) but only as to *those knit goods, which contained wool*, yet its language decides conclusively the present contention in our favor. (127 U. S. 572, 577–8.)

The cause at bar was tried below from the 2d to the 6th day of *April*, 1888. (Rec. 32, fol. 69.) The last Vietor case was here reached *May* 2, 1888, and argued upon that and the following day; decided May 14, 1888. (127 U. S. 592.)

I. First, as to importations of earlier date, of which silk was the chief value;—all classified (at 60%), as "silk wearing-apparal," although all contained cotton "in substantial quantities," the spun silk and cotton having been carded together, and the garments knit therefrom upon frames. (Rec. 45.)

Our protest as to goods arriving per the Manhattan, in March, 1873, claimed for them the 50% rate prescribed by § 8, act of 1864, for manufactures of which silk was the component of chief value; while our protest upon the July, 1873, arrival per the Nevada

claimed the true duty to be 35%; *i. e.* 30% under the act of 1861, § 22, plus 5% under § 13 of act of 1862. *(Ibid.)*

A comparison of these statutory provisions will disclose the nature and ground of each protest. We will take them in the order of filing; premising, however, that the clause applied to all these goods was that found in sec. 8, act of 1864, in the connection here indicated:—

"On spun silk, ... 25% ad val. . . . . On silk in the gum . . . . . 36% ad val. . . . . On floss silks, 35% ad val. On sewing silk . . . . 40% ad val. On all dress and piece silks, ribbons, and silk velvets, or VELVETS *of which silk is the component of chief value*, 60% ad val. On silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, *shirts*, *drawers*, bonnets, hats, caps, turbans, chemisettes, hose, mitts, aprons, stockings, *gloves*, suspenders, watch-chains, webbings, braids, fringes, galloons, tassels, cords and trimmings, 60% ad valorem." (13 Stats. 210.)

Our protest of March, 1878, demanded the application to our goods, per the Manhattan, of the very next clause, which concludes said section 8, as the foregoing commences its enumerations:—

"On all manufactures of silk, *or of which silk is the component of chief value*, not otherwise provided for, 50% *ad valorem*." *(Ib).*

In the sentence of the first quotation relating to dress and piece silks, etc., it must be noticed that the chief-component qualification is confined to *velvets*, and not extended to the ribbons and piece goods; a recognition too that articles of such mixed material were *not* to be treated as silk—as they are not such in fact. Nor is this component provision extended to *shirts* and *drawers*;—though it is to manufactures n. o. p. by the next, 50%, clause. *(Ib.)*

This statute says "not otherwise provided for;"—

instead of, not *herein* otherwise provided. (127 U. S. 576 bottom.)

Arthur v. Lahey, 96 U. S. 116 top.
Arthur v. Morrison, *Id.* 110 top.
Movius v. Arthur, 95 *Id.* 144.

These shirts and drawers are not *in fact* silk underwear or apparel. No person whose contract or order called for silk shirts would accept those of which cotton was a substantial ingredient. Arthur v. Morrison, 96 U. S. 110.

Nor were they substantially silk; since cotton was present in every of them "in *substantial* quantities." (Rec. 45, fol. 97.) The silk predominated to an undefined extent in value;—it is not probable that it did in bulk. At least, this was not proved; because not deemed material to the issue by either party.

Nor were they commercially known as silk shirts and silk drawers; but as "Novia imperial vests and drawers." (Rec. 45, fol. 96.)

Arthur v. Unkart, 96 U. S. 118, 120, quoted *infra*, p.

"Cotton shirts and drawers, woven or made on frames, and all cotton hosiery" were dutied in the last sentence of section 6 of this act of 1864 (13 Stats 209) at 35%. These 'Novia imperial vests and drawers," besides being in substantial part of cotton, were "made on frames";—hence, more particularly described here than as 'silk vests and drawers' in § 8; so would be dutiable at but 35% under this act. unless this cotton clause intended only articles entirely or substantially of that material. That such is its intention, no doubt; but it is equally the intent of sec. 8 that the shirts and drawers there enumerated should be of silk. Mere preponderance will not suffice; since this is predicated of "velvets," in the preceding sentence and of "manufactures," etc., in the succeeding one.

As between these two silk provisions—"shirts and drawers" at 60% and "manufactures," etc., at 50%, certainly the latter is the one applicable to our goods. Indeed, the former, upon which the collector relied, had, upon the facts stated in our protest and proved upon the trial, *no* application whatever.

II. Before the arrival of the steamer Nevada, in July, 1873, it occurred or had been suggested to the plaintiffs that the act of 1864 had not, as to these articles, superseded the provisions of the acts of 1861-2 applicable thereto, imposing 30% plus 5% thereon, and protests in conformity with this view were accordingly filed. (Rec. 45 middle.) Their claim seems manifestly correct.

They refer to the twenty-second section of the act of 1861 and the additional duty put on by the thirteenth section of the act of 1862.

Said twenty-second section, confined entirely to articles paying thirty per centum, contains these clauses;—

"Caps, gloves, leggins, mitts, socks, stockings, *wove shirts and drawers, and all similar articles made on frames, of whatever material composed*, worn by men, women or children, and not otherwise provided for. (12 Stats. 191.)

Clothing, ready-made, and wearing-apparel of every description, of whatever material composed, except wool, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer." *(Ibid.)*

Manufactures, not otherwise provided for, composed of mixed materials, in part of *cotton*, *silk*, wool or worsted, or flax." *(Id.* 192.*)*

The thirteenth section, act of 1862, adds five per cent to the previous duty upon articles it enumerates; among which are those of the foregoing three clauses, repeated in *totidem verbis*, so far as affects our importations. (12 Stats. 556-7.)

"Wove shirts and drawers and all similar articles made on frames, of whatever material composed" more

aptly describes our " Novia " goods than either clause of the eighth section of the act of 1864.

" Prior to 1867, there were no goods made on frames of any other material than cotton, wool or worsted, silk and linen, or a mixture of those materials." (Rec. 45, end of fol. 97.)

The act of 1867 (14 Stats. 559) affects no goods into which wool or worsted do not enter as a constituent. The above-cited decisions show the error of the trial court in its direction as to these importations.

Arthur vs. Vietor, 127 U. S. 572
and earlier Vietor cases.
Arthur vs. Lahey, 96 U. S. 117.
Movius vs. Arthur, 95 *Id.* 144.
Arthur vs. Unkart, 96 *Id.* 118.

III.

Braganza gloves.

Braganza gloves, at least nine-tenths of cotton and not over one-tenth silk, made on frames, and imported Sept. 1, 1873, were the next subject of controversy. The collector classified them, at 60%, as " wearing apparel". The plaintiffs protested they were only dutiable at 35% as " gloves made on frames". (Rec. 45 bot. and 46 top.)

Upon what theory of statutory construction a direction in favor of the collector upon this issue was given, and can now be supported, we confess ourselves at a loss to conjecture.

They are exactly covered by the cases of

Arthur v. Unkart, 96 U. S. 118–120, and
Heinze v. Arthur, 144 Id. 28.

" The articles in question did not come within the general terms of the eighth section of the act of 1864, for these reasons:—1st, They were not silk gloves, by reason of their component materials being composed of silk and cotton, the latter material preponderating; 2d, they were commercially known as " plaited gloves," [Braganza] or " patent gloves," and not as silk gloves. They did not fall within the concluding clause, because silk was not the component of chief value. The facts here stated are founded upon the concessions of the parties at the trial and upon the verdict of the jury.

Not being included in the act of 1864, the articles are dutiable under the acts of 1861 and 1862, where they are enumerated as gloves made on frames, and by the act of 1862, which adds five per cent to the duty of 1861." (96 U. S. 120.)

Heinze vs. Arthur relates to goods precisely like our importations. (144 U. S. 118.)

The heretofore-quoted, identically-phrased provisions of sec. 22, act of 1861, and Sec. 13, act of 1862, together affixing the rate we claim to " caps, *gloves*, . . . and all similar articles made on frames, of whatever material composed," etc.; in close proximity to the clause laying the same duty upon " clothing, ready-made and wearing-apparel of whatever description," etc., seem almost to preclude discussion.

No statute, intermediate between these and the revision, is perceived to affect gloves into which wool did not enter.

Though " wearing-apparel " might include ' gloves,' were the latter not specifically mentioned, yet here they are taken out of that category, and the general term is apparently restricted by the context to outer garments, a distinction being drawn between " clothing ready-made " for the general public, and " wearing apparel " made by measure upon previous order. They are not synonymous; and, where the line is drawn between

them, gloves would seem to come rather into the former than the latter class, if in either; but special mention excludes them from both. This discrimination is kept up in the third section of the act of 1865 (13 Stats. 493) in this form:

"On *ready-made* clothing of silk, or of which silk shall be a component of chief value, 60 % ad valorem." (R. S., 2d ed., 469.)

This evidences that the named article had been otherwise dutied, and affixes this rate only to that which comes within the terms of this requirement in its material.

The statutes affecting with duty the article we are now considering are thus reproduced in the revision;—

Clothing, ready-made, and wearing-apparel of every description, of whatever material composed, except wool, silk, and linen, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, not otherwise provided for; caps, *gloves*, leggins, mitts, socks, stockings, wove shirts and drawers, and *all similar articles made on frames, of whatever material composed*, except silk and linen, worn by men, women, or children, and not otherwise provided for; articles worn by men, women, or children, of whatever material composed, except silk and linen, made up, or made wholly or in part by hand, not otherwise provided for;—thirty-five per centum ad valorem. (R. S., 2d Fd., p. 474.)

This shows that the revisers, and Congress in sanctioning the revision, acted in accordance with the views announced subsequently by this Court, that these acts of 1861, 1862, 1864, 1865 and 1867 were all in contemporaneous existence at the date of the revision.

Unless this Court reads the Revised Statutes as the former laws read, the revision made a serious change (*not* affecting these importations however) in the silk schedule of 1864, as we have already noted. The Act of 1864 affixed 60% *only* to "Silk vestings," etc.; that of 1865 dutied at that rate "ready-made clothing of silk, *or of which silk is the component material of chief*

value"; in incorporating these acts the revisers so collocated them as, grammatically, to make this higher rate as applicable to the enumerated articles as to the "ready-made clothing," where silk predominates.

Silk was a small proportion of these Braganza gloves, so this changed phraseology does not affect them.

Arthur v. Unkart, 96 U. S. 118.

The decisions we have cited, and others, including the very familiar ones as to 'almonds' and 'singing birds,' etc., etc.. exclude these gloves from the "wearing apparel" clause applied to them by the collector; Heinze v. Arthur, 144 U. S. 28, most certainly does.

The grounds of such application being unimaginable to us, we shall have to await the government brief before attempting to inquire into or to examine them.

This action of the collector probably induced the plaintiffs to couple with their protest-claim of the 35% rate, one claiming also the benefit of the 50% clause. (Rec. 46 near top.) As we believe the 35% duty the proper one, we will not at present consider the other in connection with these gloves.

IV.

Thread Lace.

September 20, 1873, per steamer Abyssinia, plaintiffs imported some thread-lace shawls, which the collector dutied at 60%, although clearly only dutiable at 30%, under the sixth section of the act of 1862, as "thread lace. (12 Stats. 550.)

The court directed a verdict in favor of the defendant, as to these because of our protest "claiming that under the 6th section of the act of July 14, 1862, said

goods should only pay a duty of 35% *ad valorem*, as thread lace." (Rec. 46, fol. 99; *ante*, p. .)

That is to say;—we stand mulcted to double the amount Congress declared should be levied, because, though correctly describing the article, as matter of *fact*, and indicating the applicable section of the law relating thereto, the scribe inadvertently made the figures 35 instead of 30!

They were proved to be "thread lace." (Rec. 46, fols. 98, 99.)

That *fact* we correctly stated to the collector. He was bound to know the law, and to apply it properly to this fact.

The law as to protests (13 Stats. 214–5; R. S. § 2931) only attributes finality to "the decision of the collector," etc., "as to the RATE and *amount* of duties" not protested against; the latter being merely a mathematical computation from the former. His determination "as to the rate and amount of duties to be paid" is conclusive unless the owner, etc., give the statutory notice

"If dissatisfied with his *decision*, setting forth therein, distinctly and specifically the grounds of his objection THERETO." (13 Stats., 215 top; R. S. § 2931.)

'Decision,' in this second use of this word must imply just what it is declared to mean in its first use, *i. e.*, "as to *rate* and *amount*."

It is '*thereto*'—to that decision as to rate and amount—that the objections must be distinct and specific.

What we had to tell him, and did most distinctly tell him, was that we were, and *why* we were, dissatisfied as to the *rate* his decision assigned. (144 U. S. 34, near top.)

We were under no obligation to give this official instructions as to what he should do; only our reasons for being dissatisfied with what he had done.

The erroneous rate was assigned because of an error of *fact*. When we had corrected this mistake of *fact*, the collector should perceive for himself what the *law* required of him upon the actual conditions; and thereupon the misprision of a single figure became apparent.

Thus, in Belcher v. Lawrason, 21 How. 251, the Collector exacted a penalty of 20% upon the value of the goods; the importers protested and sued to recover that sum, so paid. The court held the exaction illegal; but added that the importer was liable to a penalty of fifty per cent of the regular duty; and gave judgment to the importer for the *difference*. It sustained the protest made, instead of defeating it because it did not tell the collector what he should have exacted, and under what provision of law.

The Collector of Customs and his subordinates engaged in classifying entries, shared with everybody else the knowledge that the act of 1862 imposed in every enumerating section after the first, (except the fifth, eighth and twelfth) "*additional*" duties only; something added to the rates of 1861. Referred to its sixth section, he found there "thread lace"; to the duty on which ten per cent. was added by this section beyond the twenty per cent. imposed by the act of 1861. (See 12 Stats. 189, 190, § 20, and 549, 550, § 6.)

It is juggling with common sense, and bringing the administration of justice into discredit, to pretend he did not know the ground of our objection to his 60% exaction; and to defeat a just recovery because of the mistake of a figure in the *surplusage* of our protest. (144 U. S. 134 near top.)

"It is sufficient if the importer indicates distinctly and definitey *the source of his complaint*, and his design to make *it* the foundation of a claim against the government."

Greeley v. Burgess, 18 How. 147.

The reason for requiring such protests is

" in order to apprise the collector of *the nature of the objection*, before it is too late to remove it, or to modify the exaction, and that the proper officers of the treasury may know what they have to meet, in case they decide to exact the duties as estimated," etc.

Davies v. Arthur, 96 U. S., 149.
Arthur v. Dodge, 101 *Id.* 37.
Same v. Morgan, 112 *Id.* 50.
Schell v. Fauche, 138 *Id.* 569.

There was "secure to the government the practical advantage which the statute was designed to secure." (112 U. S. 501.)

To retain 60% duty, upon goods which Congress intended and declared should pay but 35%, will secure to the government an inequitable advantage which the statute was not designed to secure; doing to the plaintiffs a pecuniary injury which is irreparable, and which ordinary commercial prudence or foresight could not anticipate nor prevent, since the cost of the goods, thus illegally enhanced, precluded any opportunity of disposing of them at a remunerative price.

V.

Merino hosiery, made on frames.

What we have above written applies equally to the next subject—" various descriptions of merino or worsted hosiery made on frames "—assessed at fifty cents a pound and 35% *ad valorem*, less 10%, really dutiable at but 35% less 10%, as claimed by plaintiffs' protests. (Rec. 46 bottom.)

Verdict was directed against us as to these, solely because of the supposed insufficiency of the protests in referring only to the act of 1862, which imposed the

additional duty of five per cent., the 30% being put on by the act of 1861, § 22, and the ten per cent. discount by the act of June 6, 1872, § 2. (17 Stats. 230.) This ten per cent., it will be noticed, was allowed by the collector in his assessment; so he could not be misled as to the foundation of that claim, tenable or untenable.

Even if the ten per cent reduction was inapplicable to these goods, correctly described in the protests as merino or worsted hosiery made on frames, this would not vitiate the claim to have the 35% rates of the acts of 1861–2 applied to them.

It would be the very common case of an alternative protest in condensed form.

But these importations were entitled to the reduction; since § 2, act of June 6, 1872 (17 Stats. 231; R. S. § 2503) concedes it to articles, *not* by commercial designation, but by reference to the raw material out of which they have been created by howsoever many stages of manufacture. Pott v. Arthur, 104 U. S. 735.

Such was the contemporaneous and continuous construction of the Treasury Department during the entire existence of this law.

See the 1874 edition of Heyl's Digest, page 127 note referring to the Secretary's letters of July 17, 19 and 24, 1872.

As the Circuit Court of Appeals for the Second Circuit said of bias velveteen dress-facings: "Concededly, if they are a manufactured article, they are a manufacture of cotton, because they are made out of velveteen, which itself is a manufacture of cotton."

U. S. vs. Kursheedt, C. C. A., decided Feb. 7, 1893.

In the cause at bar there was no dispute as to plaintiffs' right to recover, but for the supposed insufficiency of the protest in its reference to the statutes imposing the true rate of duty.

VI.

Ten per cent. reduction.

As to a number of other entries, assessed at fifty cents a pound and 35%, less 10%, ad val. but confessedly entitled to admission at 35% under the acts of 1861-2, and to ten per cent. off under the act of 1872, the Court directed a recovery of the pound duty exacted, because the protest explicitly claimed the 35% rate naming the applicable sections of the acts of 1861 and 1862 affixing it, but denied plaintiffs the benefit of the horizontal ten per cent. reduction made by the act of 1872, because it was not specifically demanded in the protest and reference made to this latter act therein. (Rec. 47, fol. 102.)

This is the same error for which the judgment in the Heinze case was reversed. We told the collector distinctly our (well-founded) objection the rate he exacted. We, superfluously, went further and *correctly* indicated, by reference and *quotation*, the provision which did apply to our goods;—but because we did not state to him further that the law of 1872 entitled us to *the very reduction he had made from the higher rate* he had assessed, we were held disentitled to the benefit of this statute.

Heinze v. Arthur, 144 U. S. 28.

The whole controversy between the importers and the collector was as to the *enumerating* clause applicable to these goods—the ten per cent. reduction indisputably applying to either. The *fact* was in issue, which clause more accurately described the goods. The reduction attached thereto, as matter of law, however the fact might ultimately be determined.

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